

THE ASSISTANT SECRETARY OF THE NAVY
(Research, Development and Acquisition)
WASHINGTON, D.C. 20350-1000

MEMORANDUM FOR ALL DEPARTMENT OF THE NAVY ACQUISITION PERSONNEL

Subj:

JANUARY 1992 EDITION OF THE NAVY ACQUISITION PROCEDURES SUPPLEMENT (NAPS)

As the Navy Acquisition Executive and Senior Procurement Executive, I am responsible for prescribing Department of the Navy procurement policies and procedures. This responsibility includes authorizing the issuance of the Navy Acquisition Procedures Supplement (NAPS) to implement and supplement the Federal Acquisition Regulation (FAR) and the Defense FAR Supplement (DFARS).

This new edition of the NAPS is being issued to conform to the recently issued 1991 edition of the DFARS. In addition to conforming the NAPS to the revised structure and content of the DFARS, we continued our efforts to clarify existing coverage and remove text that was unnecessary or redundant. Specific changes are identified in the enclosed "Summary of Significant Changes."

The Director, Procurement Policy on my staff is responsible for maintaining the currency of the NAPS. I fully support the development of new techniques or methods of procurement and encourage all DoN acquisition personnel to pursue any required changes or deviations to the FAR/DFARS/NAPS. Recommendations should be submitted to the Director, Procurement Policy.

(Signed)
GERALD A. CANN

NAVY ACQUISITION PROCEDURES SUPPLEMENT (NAPS) JANUARY 1992 EDITION

FOREWORD

The Navy Acquisition Procedures Supplement (NAPS) implements and supplements the Federal Acquisition Regulation (FAR) and the Department of Defense FAR Supplement (DFARS). It establishes uniform policies and procedures to be followed by all Department of the Navy contracting personnel in acquiring required supplies and services. The NAPS is not intended to be a stand alone document and must be read in consonance with the FAR and DFARS.

This January 1992 edition is effective upon receipt and supersedes the October 1990 edition. The October 1990 edition should be retained for the administration of contracts and for historical reference.

SUMMARY OF SIGNIFICANT CHANGES

ITEM I - NEW NUMBERING OF NAPS

This edition of the NAPS has been renumbered to match the numbering system of the Code of Federal Regulations. An explanation of the numbering is at 5201.104-2 and 5201.303.

ITEM II - DEPARTMENT OF NAVY PLAN FOR CONTROL OF COMPONENT CLAUSE USE.

Paragraph 5201-304(4) is added to establish a system of control for use of clauses other than those prescribed in the FAR, DFARS or NAPS.

ITEM III - NAVY FIELD CONTRACTING SYSTEM (NFCS)

Paragraph 5201.601-90(d) is revised to reflect that the NFCS includes those contracting office that are under the responsibility of the Naval Air Warfare Center, Naval Surface Warfare Center, Naval Undersea Warfare Center, and the Command, Control and Ocean Surveillance Center.

ITEM IV - USE OF SIMPLIFIED FORMAT AND CONTENT FOR CERTAIN BUSINESS CLEARANCES.

Paragraph 5201.690-9(a) is added to authorize the HCA to prescribe simplified format and content requirements for pre-negotiation and post-negotiation business clearances covering contract actions not in excess of \$500,000. This coverage supersedes OASN(RD&A) APIA-PP memorandum of 28 October 1991, "Advance change to Navy Acquisition Procedures Supplement (NAPS) Pertaining to Business Clearance Format".

ITEM V - SECRETARIAL DETERMINATIONS AND FINDINGS

Subsection 5201.707-90 is added to prescribe that all requests for a Secretarial determination are to be submitted in the form of a determination and findings.

ITEM VI - DEFINITIONS

Section 5202.101 is revised to incorporate additional terms along with their definition and acronym. Several of these terms are used extensively throughout the NAPS.

ITEM VII - STANDARDS OF CONDUCT

Subsection 5203-101.1 is coverage pertaining to the assignment of contract related functions that previously appeared at section 3.591 in the October 1990 edition of the NAPS.

ITEM VIII- ANNOUNCEMENT OF CONTRACT AWARDS

Section 5205.303 is revised to eliminate previous coverage that is no longer necessary as a result of new coverages in the 1991 edition of the DFARS. This section is also revised to clarify that when a contract administration office (CAO) is to issue an order or contract modification that requires announcement, the Navy requiring activity is responsible for the announcement.

ITEM VIX - ACQUISITION PLANNING

Subparagraph 5207.103(c)(i) is revised to reference a new Acquisition Planning Guide which is expected to be available by 1 March 1992. Subparagraph 5207.103(d)(ii) (formerly 7.103(d) (S-92) is revised to provide that contractor services, for which full and open competition is employed in a source selection plan requiring award to the lowest price, technically acceptable offer, are no longer an

exception to AP preparation. Finally, subparagraph 5207.103(g)(ii) is revised to incorporate reference to the Acquisition Strategy Report (ASR) required by DoD Instruction 5000.2. For all Acquisition Category (ACAT) programs, an AP may not be approved until the ASR has been approved by the Milestone Decision Authority (MDA).

ITEM X - SUSPENSION AND DEBARMENT

Subpart 5209.4 is revised to reflect the designation of the General Counsel of the Department of the Navy as the Navy's debarring and suspending official. This subpart is also revised to identify the Procurement Integrity Office (PIO) within the office of General Counsel as the responsible office for all debarment and suspension actions.

ITEM XI - CONSOLIDATED BID ROOM FACILITIES

Subsection 5214.202-90 is coverage pertaining to consolidated bid room facilities at NRCC Washington that previously appeared at paragraph 1.601-90(c) in the October 1990 edition of the NAPS.

ITEM XII - BEST VALUE EVALUATION IN SOURCE SELECTION

Section 5215.601 is added to provide a definition of "Best Value" and section 5215.605 is revised to affirm Navy-wide policy on the use of best value in proposal evaluations and source selections. This revised coverage was initially promulgated by ASN(RD&A) memorandum of 22 March 1991, "Best Value Contracting Policy".

ITEM XIII - USD(A) REVIEW OF SELECTED MAJOR DEFENSE ACQUISITION PROGRAMS

Section 5215.604 is added to provide that contracting officers are not to issue a solicitation, announce the offeror selected, or award a contract for the demonstration/validation, engineering and manufacturing development, or initial production phases of a major defense acquisition program until the completion of a review by the Under Secretary of Defense (Acquisition).

ITEM XIV - PHASED PRICING (PP)

Subsection 5216.403-2 is added to establish Phased Pricing (PP) as a contracting technique for pricing an initial production option in an Engineering and Manufacturing Development (EMD) contract awarded either competitively or noncompetitively.

ITEM XV - UNDEFINITIZED CONTRACTING ACTIONS (UCAs)

Subpart 5217.74 (formerly subpart 17.75) is rewritten to reflect the new and revised coverage in subpart 217.74 of the 1991 edition of the DFARS. In particular, the requirement for Flag/SES approval for the issuance of a UCA without a contractor's proposal that is projected to exceed \$1 million has been eliminated, and is now at the discretion of the HCA.

ITEM XVI - SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Part 5219 is revised to eliminate coverage that is either no longer necessary or duplicates coverage in the FAR/DFARS.

ITEM XVII - ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY AND DRUG-FREE WORKFORCE

Part 5223 is added to establish procedures for the submission of any required exemptions or waivers.

ITEM XVIII - BONDS AND INSURANCE

Part 5228 is revised to eliminate coverage that is either no longer necessary or duplicates coverage in the FAR/DFARS.

ITEM XIX - DEPARTMENT OF THE NAVY CLAIMS AGAINST A CONTRACTOR

Part 5232.690 is revised to eliminate the requirement for an initial report or Government claims against a contractor. Only quarterly reports are now required.

ITEM XX - DISPUTES AND APPEALS

Subpart 5233 has been revised and rearranged to conform to the FAR/DFARS and clarify the procedures for the review and approval of claims settlements and contracting officer's final decisions. In addition, subpart 5233.70 is coverage pertaining to the certification of claims and requests for adjustment or relief that previously appeared at paragraph 43.102-91 (a) in the October 1990 edition of the NAPS. Finally, the initial and final claims reporting requirements have been eliminated. These requirements previously appeared at subparagraphs 33.9001 (a) and (d) in the October 1990 edition of the NAPS. Reporting is limited to quarterly reports of claims in excess of \$1 million that have been certified under the Contract Disputes Act.

ITEM XXI - PHASED PRICING (CPP) AS AN ACQUISITION STRATEGY

Section 5234.004 is added to provide that the Phased Pricing (PP) technique described in 5216.403-2, must be addressed if the acquisition strategy contemplates the use of an option for initial production requirements in an Engineering and Manufacturing Development (EMD) contract awarded either competitively or noncompetitively.

ITEM XXII - UNCOMPENSATED OVERTIME

Section 5237.102 is added to reflect Navy policy that the use of uncompensated overtime is not encouraged and to require Chief of the Contracting office or designee approval of solicitations for services expected to exceed \$100,000 which are based on the number of hours to be provided.

ITEM XXIII - MASTER AGREEMENTS FOR CONTRACT ADVISORY AND ASSISTANCE SERVICES

Section 5237.270 is added to provide Navy approval requirements and procedures for complying with the DFARS reporting requirements when using Master Agreements to acquire contract advisory and assistance services. This coverage supersedes OASN (RD&A) APIA-PP memorandum of 15 August 1991, "Three Year Test of Master Agreements for Contract Advisory and Assistance Services".

ITEM XXIV - ACQUISITION OF INFORMATION RESOURCES

Part 5239 is added to implement the new DFARS coverage pertaining to the acquisition of Federal Information Processing (FIP) resources. Part 5239 also includes coverage that previously appeared in Part 70 of the October 1990 edition of the NAPS.

ITEM XXV - ACQUISITION OF UTILITY SERVICES

Part 5241 is coverage pertaining to the acquisition of utility services that previously appeared in subpart 8.3 of the October 1990 edition of the NAPS. Coverage on the acquisition of utility services has also been moved to Part 41/241 of the FAR/DFARS.

ITEM XXVI - CONTRACT ADMINISTRATION

Part 5242 is revised to eliminate coverage that is either no longer necessary or duplicates coverage in the FAR/DFARS.

ITEM XXVII - CONTRACT MODIFICATIONS AND CHANGE ORDERS

Section 5243.105 has been added to incorporate coverage pertaining to price adjustments under shipbuilding contracts. This coverage appeared as an interim rule

in the December 5, 1991 edition of the Federal Register, Volume 56, Number 234. In addition, subpart 5242.3 has been revised to provide that unpriced change orders conform to the new and revised requirements of subpart 5217.74.

ITEMS XXVIII - CONTRACTORS' PURCHASING SYSTEMS REVIEWS (CPSR)

Coverage pertaining to the CPSR responsibilities of the Supervisors of Shipbuilding (SUPSHIPS) has been eliminated as no longer being necessary. This coverage appeared in section 44.304 of the October 1990 edition of the NAPS.

ITEM XXVIX - INSTRUCTIONS FOR USING PROVISIONS AND CLAUSES

Section 5252.101 is revised to provide instructions for assigning numbers to provisions and clauses. In addition, the provisions and clauses prescribed by section 5243.105 are added to this Part 5252.

PART 5201

FEDERAL ACQUISITION REGULATIONS SYSTEM

SUBPART 5201.1--PURPOSE, AUTHORITY, ISSUANCE

5201.101 Purpose.

The Navy Acquisition Procedures Supplement (NAPS) establishes uniform Department of the Navy (DoN) policies and procedures implementing and supplementing the Federal Acquisition Regulation (FAR) and the Defense FAR Supplement (DFARS).

5201.102 Authority.

The NAPS is issued pursuant to the authority contained in SECNAVINST 5400.15 dated 5 August 1991.

5201.103 Applicability.

The NAPS applies to all DoN activities in the same manner and to the same extent as specified in FAR 1.103.

5201.104 Issuance.

5201.104-2 Arrangement of regulations.

(c) References and citations.

(2) Cross reference to the FAR in this supplement will cite "FAR" followed by the appropriate part, subpart, etc. Cross reference to the Defense FAR Supplement will cite "DFARS" followed by the appropriate part, subpart, etc. References within this supplement to this supplement will be without a name or acronym prefix. References to FAR citations in this supplement should be read to include any corresponding paragraphs of the DFARS and this supplement and any additional authorizations, restrictions, policies and procedures they may contain. For example, the words "...when authorized under FAR Part 25..." include authorities granted under FAR Part 25, Part 225 and Part 5225 of this supplement. A DFARS cite in parentheses immediately after the NAPS cite means related coverage is contained in the DFARS (e.g. 5201.371 (DFARS 201.371)).

5201.104-3 Copies

Copies of the NAPS may be purchased from the Navy Aviation Supply Office, Physical Distribution Division (Code 103), 5801 Tabor Avenue, Philadelphia, Pennsylvania 19120-5099. The NAPS is not available from the Government Printing Office.

5201.104-90 Distribution.

(a) Distribution of the FAR, the DFARS, the NAPS, and any changes thereto will be made to DoN activities in accordance with (b) and (c) below.

(b) The distribution list for all FAR, DFARS and the NAPS materials is maintained by APIA-PP. Forward requests for additions, deletions or changes (including quantity changes) to the distribution list to APIA-PP, Washington, D.C. 20350-1000. Report discrepancies in distribution such as quantity errors, late or non-receipt of the above material(s) to the Navy Aviation Supply Office, Physical Distribution Division (Code 103) at the address shown under 5201.104-3.

(c) To obtain the publications identified in (a) above, submit DoD Single Line Item Requisitioning System Document (DD Form 1348) in accordance with the "Military Standard Requisitioning and Issue Procedure (MILSTRIP), NAVSUP PUB 437" to the Navy Aviation Supply Office, Physical Distribution Division (Code 103) at the address shown under 5201.104-3. The stock number for these publications is listed in the Navy Stock List of Publications and Forms, Cognizance Symbols 12 and 11, Section V NAVSUP Publication 2002.

SUBPART 5201.2--ADMINISTRATION

5201.201 Maintenance of the FAR.

5201.201-1 (DFARS 201.201-1) The two councils.

(d) (I) Submit proposed revisions to the FAR, DFARS or NAPS to APIA-PP via the Deputy/Assistant Commander for Contracts. Each proposed revision shall include a legal position and shall identify the name, code, and telephone number of the activity point of contact.

SUBPART 5201.3--AGENCY ACQUISITION REGULATIONS

5201.301 Policy.

(a) (2) HCAs and CCOs are authorized to issue internal activity guidance as described at FAR 1.301(a) (2).

5201.303 (DFARS 201.303) Publication and codification.

(a) (i) Where required, the NAPS is codified under Chapter 52 in Title 48, Code of Federal Regulations.

(ii) To the extent possible, all NAPS text (whether implemental or supplemental) is numbered as if it were implementing the FAR or DFARS. The coverage uses the same numbers as its FAR or DFARS counterpart, preceded by the prefix "52". For numbering of Navy/component clauses, see 5252.101.

(iii) For supplemental numbering, the NAPS adds subpart, section, or subsection numbering of 90 and up to the FAR or DFARS counterpart. Lower divisions are supplemented by the addition of (S-90) and up.

5201.304 (DFARS 201.304) Agency control and compliance procedures.

(4) DoN Procedures for Control of Component Clause Use.

(A) Statement of Purpose. These procedures establish a system of controls for use of clauses other than those prescribed in FAR, DFARS, or NAPS, as required by DFARS 201.304(4).

(B) Definitions.

(a) "Clause" as used in these procedures includes provisions and means a term or condition of the solicitation/contract of the type set forth in FAR Part 52/DFARS Part 252/NAPS Part 5252. A clause includes everything in parts B through M of a solicitation/contract except:

(1) The list of supplies or services and prices/costs in Section B;

(2) The statement of work and specifications in Section C;

(3) Packaging and marking requirements in Section D;

(4) Requirements for place of inspection/acceptance in Section E;

(5) Requirements for time, place, and method of delivery or performance in section F;

(6) The list of attachments in Section J; and

(7) Brief statements of strictly administrative, informational nature, without significant cost or administrative impact on offerors or contractors, which the originating activity has determined do not fit the above definition of "clause".

(b) "Navy Clause Baseline" means all approved Navy standard component clauses.

(b) "Non-standard Component Clause" means a component clause not prescribed for use in a component regulation.

(d) "Regulation" means any contracting supplement, policy letter, clause book, automated system, or similar regulatory instrument.

(e) "Standard Component Clause" means a component clause prescribed for use in a component regulation.

(C) Standard Component Clauses.

(a) Usage. All component clauses used in solicitations and/or contracts must be standard clauses, unless:

(1) A deviation has been authorized in accordance with (c) below; or

(2) One of the exceptions listed in (D) below permitting use of non-standard clauses is applicable.

(b) Approval.

(1) New Standard Component Clauses or Standard Component Clause Changes With Significant Impact. In compliance with 41 U.S.C. 418b and 41 U.S.C. 25(d) as implemented by DFARS 201.304, each contracting activity shall publish new component clauses or changes to existing component clauses that require USD(A) approval as a proposed rule in the Federal Register for public comment. After receipt and analysis of public comments, the contracting activity shall submit the proposed rule, in accordance with DFARS 201.201-1(d)/NAPS 5201.201-1(d) and DFARS 201.301, through the HCA and APIA-PP to the DAR Council Director, prior to publication as a final rule.

(2) New Standard Component Clauses or Component Clause Changes Without Significant Impact. New standard component clauses or changes to existing standard component clauses which do not have significant cost or administrative impact on offerors/contractors, do not require publication for public comment or approval of APIA-PP and USD(A) DDP. However, a copy shall be provided to APIA-PP for inclusion in the Navy clause baseline.

(c) Deviations from Standard Component Clauses.

(1) Competitive Procurements.

(i) Deviations from standard component clauses which may significantly increase cost or administrative impact on offerors/contractors in competitive procurements shall be submitted by the Deputy/Assistant Commander for Contracts to the DAR Council Director, via APIA-PP, for approval by USD(A) DDP.

(ii) The HCA, or a designee not lower than one level above the contracting officer, is authorized to approve individual and class deviations from standard

component clauses for use in competitive procurements which do not constitute a deviation from FAR/DFARS/NAPS, or significantly increase cost or administrative impact on offerors/contractors.

(iii) APIA-PP shall be provided a copy of deviations approved under (ii) above which are class deviations, or individual deviations related to:

- (A) rights in data and copyrights (FAR/DFARS/NAPS 27.4);
- (B) contract financing (FAR/DFARS/NAPS 32); or
- (C) warranties (FAR/DFARS/NAPS 46.7)

(2) Non-competitive Negotiated Procurements. Deviations from standard component clauses which are required to deal with a unique situation with one contractor shall be approved at the component level except those which are FAR/DFARS/NAPS deviations.

(d) Numbering. All standard component clauses shall be numbered in accordance with 5252.101.

(D) Non-standard Component Clauses.

(a) Usage. The usage of nonstandard component clauses is limited as follows:

(1) Non-standard component clauses having significant cost or administrative impact on offerors/contractors, except as specified in (3) and (4) below, shall Not be used in solicitations/contracts to be awarded based on competition, unless there is advance agreement of the parties (generally dual source or limited competition).

(2) Non-standard negotiated component clauses may be used by mutual agreement of both parties in non-competitive procurements (generally sole source).

(3) A non-standard component clause is authorized when FAR or DFARS requires a clause to be tailored to the individual situation (such as Organizational Conflict of Interest).

(4) Provisions relating to proposal preparation requirements or evaluation/award criteria, which are to be tailored as required for each acquisition are authorized as non-standard clauses.

(5) Clauses which have no significant cost or administrative impact on offerors/contractors, and the component activity does not choose to designate or control as standard clauses may be used as non-standard clauses.

(6) Non-standard clauses of types (1) and (2) shall be included in a clause book. Sample clauses of types (3) through (5) may be included in a clause book as examples only, not prescribed for use.

(b) Approval. Non-standard clauses are not included in the Navy clause baseline and do not require approval of APIA-PP, unless usage constitutes a deviation from FAR/DFARS/NAPS.

(c) Deviations. If the component activity provides samples of non-standard clauses in categories (a) (3) through (a) (5) above, variation from such samples does not constitute a deviation.

(d) Numbering. Non-standard component clauses shall not be numbered but shall be identified in accordance with FAR 52.103(c).

(6) Revisions to the NAPS are issued through Navy Acquisition Circulars or advance change APIA-PP memoranda. Navy Acquisition Circulars are-

(i) published as often as may be necessary.

(ii) effective upon receipt or upon a specified date. The effective date means the date on which the revisions must be applied. Any new or revised clauses or forms must be included in solicitations issued on or after that date. However, unless otherwise provided in the circular, the new or revised clauses or forms need not be included in solicitations already in process of preparation where their inclusion would cause an undue delay in the solicitation.

(E) "Substantially the Same As" Clauses.

(a) Usage. Component clauses may be used to implement FAR/DFARS/NAPS clauses which permit usage of clauses "substantially the same as" the prescribed clause or other variation. These clauses shall not contain material differences from those already authorized for use.

(b) Approval. "Substantially the same as" clauses do not require ASN (RDA)APIA-PP approval, but shall be approved by the HCA or designee not lower than one level above the contracting officer. The approving official shall ensure that the variations in the clause are within the scope of the variations authorized by the regulations and are appropriate to the planned circumstances for clause use.

(c) Numbering. "Substantially the same as" clauses shall cite the FAR/DFARS/NAPS clause number, title, and date followed by (VARIATION).

5201.304-90 USEUCOM Supplement.

The DoN member of the Joint Acquisition Coordinating Board - Europe (JACB-E) represents all contracting activities of the DoN located in the area to which the USEUCOM Supplement is applicable. Accordingly, such DoN representation shall inform the DoN contracting activities concerned of significant proposed additions and changes to the Supplement and afford them an opportunity to express their views thereon. When the DoN representative on the JACB-E considers that the DAR Council should consider any dissenting DoN views with respect to proposed additions or changes to the USECOM Supplement that are concurred in by the JACB-E, the DoN representative views in writing to the Chairman of the JACB-E with the request that they be forwarded to the DAR Council with the proposed additions and changes. Legal advice and assistance in connection with the USECOM Supplement and other JACB-E matters will be provided by the Office of the General Counsel, European Branch, London, U.K.

SUBPART 5201.4--DEVIATIONS FROM THE FAR

5201.402 (DFARS 201.402) Policy.

(1) Submit requests for deviations which require USD (A) DDP approval to APIA-PP.

(1) (ii) Deviations involving basic agreements, basic ordering agreements, or master agreements are considered class deviations.

(2) APIA-PP is the approval authority for:

(i) individual deviations from the FAR or DFARS other than those specified in DFARS 201.402(1) (i), except that an individual deviation from the maximum fee limitations set forth in FAR 15.903 (d) (2) may be granted by the HCA or designee not below the level of the Deputy/Assistant Commander for Contracts.

(ii) individual or class deviations from NAPS.

(iii) deviations from certain component clauses (see 5201.304 (4)).

(3) Deviation requests submitted to APIA-PP for processing shall be signed by the Deputy/Assistant Commander for Contracts or his deputy. A request for deviation originating from a field activity shall be signed by the CCO and forwarded to the cognizant Deputy/Assistant Commander for Contracts for further action.

(4) Requests for deviations from the provisions of FAR Subparts 27.2, 27.3 and 27.6 shall be forwarded to APIA-PP via the Chief of Naval Research (Code OCCC).

(5) APIA-PP will maintain a record to all requests for individual and class deviations received for processing. The Deputy/Assistant Commander for Contracts will maintain a record of all requests for individual deviations from maximum fee limitations received for processing under paragraph (2) (i) above. A control number shall be assigned to each approved deviation.

5201.405 Deviations pertaining to treaties and executive agreements.

(d) Forward a copy of the authorized text deviation to the DAR council via APIA-PP.

(e) Deviation requests shall be submitted to USD(A) DDP through APIA-PP and the Director of the DAR Council.

SUBPART 5201.5--AGENCY AND PUBLIC PARTICIPATION

5201.501 Solicitation of agency and public views.

5201-90 Point of contact for Federal Register matters.

The Navy Judge Advocate General (Code 133) is the primary point of contact in the DoN for all Federal Register/Code of Federal Regulations matters.

SUBPART 5201.6--CONTRACTING AUTHORITY AND RESPONSIBILITIES

5201.601 General.

Each DoN HCA is hereby designated a contracting officer. Subject to the provisions of FAR Subpart 1.6, each HCA is authorized to delegate all or any part of the HCA's contracting authority not otherwise restricted.

5201.601-90 Department of the Navy authorities and responsibilities.

(a) Assistant Secretary of the Navy (Research, Development and Acquisition) (ASN(RD&A)). SECNAVINST 5400.15 dated 5 August 1991 establishes the duties and responsibilities of the ASN(RD&A), including serving as the NAE and NSPE.

(b) NAVFACENGCOM cognizance of public works and civil works.

(1) Responsibility. OPNAVINST 5450.218 establishes the mission, functions and tasks of the Commander, NAVFACENGCOM, including responsibility for awarding and administering architect-engineer, construction and facilities support contracts. Also included is the responsibility for providing public works in areas of fleet or training concentration.

(2) Delegation of responsibility for administration of construction. Current legislation provides that delegation to another Government agency or bureau of the responsibilities outlined in (1) above for public works, as authorized by annual authorization acts, within the United States or its possessions, must be approved by the Secretary of Defense. Where it is considered to be in the best interests of the Navy that such a public works project be administered by a Systems Command or office other than NAVFACENGCOM, a request shall be forwarded to APIA-PP via NAVFACENGCOM. Before forwarding a request for delegation of responsibility for administration of a public works contract, NAVFACENGCOM shall ensure that all arrangements for administering the contract and inspecting the work satisfy the needs of the Government.

(3) Approval for use of cost-reimbursement type construction contracts. Current appropriation legislation requires the specific approval in writing of the Secretary of Defense for any cost-reimbursement type contract over \$25,000 using funds appropriated for military construction for work to be performed within the continental United States. NAVFACENGCOM shall be responsible for obtaining such clearance. As a rule, such contracts will be executed and administered by NAVFACENGCOM. However, in those unusual circumstances where such a cost-reimbursement type contract is to be executed by a Systems Command or office other than NAVFACENGCOM, the contracting Systems Command or office shall furnish

NAVFACENGCOM with a justification for the use of this method of contracting and shall not execute the contract until notified by NAVFACENGCOM that clearance has been obtained from the Secretary of Defense.

(4) Construction contracts awarded by other commands. Where, pursuant to (2) or (3) above, a contract involving construction is being executed or administered by a Systems Command or office other than NAVFACENGCOM, that other Systems Command or office shall normally be responsible for the handling of all other matters that arise concerning that contract. However, for construction contracts over \$2,000 or other contracts requiring civil works over \$2,000, NAVFACENGCOM will, on behalf of the other Systems Command or office, obtain from the Department of Labor the determination of prevailing wages which must be specified in the contract. NAVFACENGCOM will further furnish such advice and assistance as may be requested is appropriate. As to the technical and engineering details of the construction, repair and maintenance, other Systems Commands and offices shall consult with and comply with the standards of NAVFACENGCOM in accordance with existing directives.

(5) Administration of construction portions of contracts.

(i) When a contract for construction of civil works is made directly between the DoN and a builder (as distinguished from the contractor who is to operate the facilities) NAVFACENGCOM will be the contracting agency with the work to be financed by transfer of funds from the sponsoring contracting activity to NAVFACENGCOM. However, where the contract is made between the sponsoring contracting activity and the producer, the contract shall specify, by inclusion of the clause prescribed in (6) below, the Commander, NAVFACENGCOM is the authorized representative of the sponsoring contracting activity with respect to all functions in relationship to civil works.

(ii) The functions to be performed by NAVFACENGCOM under this supplement include approving the selection and compensation of an architect or engineer; approving the selection and fee of a general building contractor, plans or specifications; approving of major alterations or increased costs; inspection, supervision, administration of the terms of the contract/subcontract and acceptance of performance. The NAVFACENGCOM may delegate the administration of any aspect of the civil works where determined feasible, such as the monitoring of compliance with labor standards requirements. The NAVFACENGCOM has cognizance of all matters relating to the acquisition of real property involved.

(iii) Where the same contract includes civil works as well as other facilities, such as machine tools, production equipment, actual operation and production, etc., NAVFACENGCOM will have jurisdiction only over the civil works construction and installation, acting as the authorized representative of the sponsoring contracting activity. However, in certain instances, it may be determined by mutual agreement between the sponsoring contracting activity and NAVFACENGCOM to be advantageous for NAVFACENGCOM to have jurisdiction over equipment as well as civil works. In such instances, upon the specific request of the sponsoring contracting activity, NAVFACENGCOM also has jurisdiction over the installation of the machine tools and production equipment to the extent defined for civil works under (ii) above.

(iv) This supplement does not limit the authority of the sponsoring contracting activity to define the scope of a civil works project including the size, capacity, and operating features and characteristics, in the same manner as is exercised with respect to public utilities by a primary support agency.

(6) Solicitation provision and contract clause. The contracting officer shall insert the clause at 5252.201-9000, Civil Works - Delegation to Naval Facilities Engineering Command, in solicitations and contracts when construction of civil works is contemplated.

(c) NAVSUPSYSCOM. NAVSUPSYSCOM contracting responsibilities include:

- (1) providing DoN-wide policy and procedures for small purchases as defined in FAR Part 13;
 - (2) contracting for supplies and services throughout the DoN for which no other contracting activity, office or command is otherwise delegated contracting authority; and
 - (3) management of the NFCS.
- (d) Navy Field Contracting System (NFCS).

(1) Authorities and responsibilities.

(i) The authorities and responsibilities of the NFCS are set forth in NAVSUPINST 4200.81.

(ii) The NFCS includes contracting offices that receive their procurement authority from COMNAVSUPSYSCOM as the HCA. NFCS contracting offices that receive their procurement authority from COMNAVSUPSYSCOM include, but are not limited to, those located at the Naval Regional Contracting Centers, Naval Supply Centers, Naval Supply Depots, Naval Ship Yards, and Naval Air Stations. The NFCS also includes contracting offices that are under the responsibility of the Naval Air Warfare Center, the Naval Surface Warfare Center, the Naval Undersea Warfare Center, and the Command, Control and Ocean Surveillance Center. The Aviation Supply Office (ASO) and Ships Parts Control Center (SPCC) are a part of the NFCS but have separate HCA authority.

(2) Assignment of contracting actions by Systems Commands to field activities within the NFCS.

(i) Assignment. In obtaining materials or services required for the performance of its assigned mission, each of the Navy Systems Commands may request other activities to carry out requisite contracting functions which are within the activity's mission and responsibility. Contracting actions that should properly be handled at the Systems Command Headquarters level should not be assigned to a NFCS activity.

(ii) Considerations. The following considerations shall be taken into account in assigning contracting actions:

(A) That the contracting organization at each field activity of the NAVAIRSYSCOM, NAVSEASYSYSCOM, and SPAWARSYSCOM have been established to support the research, production or other technical mission of the particular field activity;

(B) That requests for contracting action are for materials and/or services which are clearly within the activity's mission and responsibility;

(C) That the central area buying activities of the NFCS are responsible for providing contracting support to the Naval activities located in the given area served;

(D) That the Naval Regional Contracting Centers (NRCCs) and Naval Supply Centers assigned regional contracting functions furnish overall contracting and contracting management support for the geographic area served; and

(E) That the activities in (C) and (D) above, in that order, are responsible for awarding those contracts which are in excess of either the contracting authority or capability of the activities of the NFCS located within the geographic regions served.

(iii) Procedures. To establish uniform and more effective methods of assigning contract actions and tasks or work orders involving requirements generated by the Systems Commands named in (ii) (A) above, the following procedures shall be followed:

(A) The Deputy/Assistant Commander for Contracts shall review all requirements, originated at the Systems Command Headquarters level involving contracting action in excess of \$1,000,000 or a lower level established by the Commander of the Systems Commands to ensure retention by the Command of those

requirements which, because of high dollar value, complexity, or other considerations, warrant contracting action at the Headquarters level.

(B) A Systems Command shall obtain the concurrence of the Deputy Commander, Contracting Management, NAVSUPSYSCOM prior to assigning to an NFCS activity, any contracting action in excess of \$1,000,000, or any contract/agreement of the type described in FAR Subparts 16.5, 16.6 or 16.7 whose total cumulative value is expected to exceed \$1,000,000. NAVSUPSYSCOM concurrence shall be indicated in the request to a NFCS activity for contracting action.

(C) When a NFCS activity receives a contracting action which is not consistent with (B) above, the NFCS activity shall return the request and so advise NAVSUPSYSCOM.

5201.602 Contracting officers.

5201.602-2 Responsibilities.

Contract documents shall be forwarded to the appropriate attorney or attorneys in the OGC for review as to form and legality and any additional pertinent comment or advice. Any contract approved by Navy OGC may be executed by a contracting officer without securing further legal review.

5201.602-2 (DFARS 5201.602-2) Responsibilities.

(1) The term "Government employee" includes employees of foreign governments when assigned to multinational Joint Project Offices.

5201.602-3 Ratification of unauthorized commitments.

(b) Policy.

(3) HCAs may delegate authority to ratify unauthorized commitments of \$50,000.00 or less to a level no lower than the CCO. All proposed ratifications shall be reviewed by the appropriate counsel(s) of the Office of the General Counsel and all contracts shall be approved as to form and legality.

(c) Limitations.

(7) (i) The officer or employee making the unauthorized commitment shall forward to that person's Commanding Officer documentation concerning the transaction, which shall include as a minimum:

(A) A statement signed by the officer or employee describing the circumstances, why normal procurement procedures were not followed, what bona fide Government requirement necessitated the commitment, whether any benefit was received, its value, and any other pertinent facts; and

(B) All orders, invoices, or other documentary evidence of the transaction.

(ii) If the Commanding Officer concurs that the commitment should be ratified, then the Commanding Officer shall forward the documentation described above to the contracting officer with an endorsement that:

(A) Verifies the accuracy and completeness of the documentation;

(B) Describes the measures taken to prevent a recurrence of unauthorized commitments; and

(C) Provides a complete purchase description and funding for the ratifying contract.

(iii) The contracting officer shall:

(A) Review the documentation and endorsement provided;

(B) Ascertain whether there are any doubtful questions of fact;

(C) Prepare a determination and findings addressing the limitations in FAR

1.602-3(c) (1) through (7).

(D) Prepare a recommendation to the ratifying official;

(E) Prepare appropriate contractual documents; and
(F) Submit the contract and supporting documents to counsel for an opinion as to form and legality and for any additional pertinent comment or advice.

(iv) The ratifying official to whom authority has been delegated pursuant to (b) (3) above shall review the file, and if ratification is proper, make the appropriate determination and findings.

(v) Records. HCAs shall ensure that a record of all ratification actions is maintained. This record shall include, the identity of the contracting office performing the ratification, the dollar value of the ratification action, and a copy of the required determined and findings.

5201.690 Requirements to be met before entering into contracts.

5201.690-1 Business clearance.

(a) The purpose of a business clearance is to demonstrate that the proposed acquisition conforms to good business practices and Navy acquisition policies. Additionally, the business clearance serves as the historical record of the business/pricing aspects of an acquisition and justifies, by written evidence, that the price established is fair and reasonable. Consequently, the business clearance must show all significance facts considered in reaching agreement as well as how the facts presented influenced estimated cost judgments. For competitive negotiated acquisitions the business clearance serves as the historical record of the source selection process where factors in addition to price may serve as the primary basis for award. Each acquisition shall be supported by both a pre-negotiation and post-negotiation business clearance. The requirements of FAR 15.807 and FAR 15.808 are to be satisfied by the pre-negotiation and post-negotiation business clearances, respectively.

(b) For proposed contractual actions to be made under the authority of FAR Subpart 6.2 or 6.3, no business clearance shall be approved at any level until either the determination and findings required by FAR 6.202 or 6.302-7 is approved, or the justification required by FAR 6.303 is approved. The one exception is that when preparation and approval of a justification prior to award would unreasonably delay the acquisition, then the justification may be approved after contract award in accordance with FAR 6.303-1(e).

5201.690-2 Pre-negotiation and post-negotiation business clearances.

(a) Single source acquisitions.

(1) Pre-negotiation business clearance. The purpose of the pre-negotiation business clearance is to set forth all significant details of the proposed contract negotiation and the course the contracting activity proposes to pursue. In addition, the pre-negotiation business clearance should document how the contractor developed its proposal position, what the field price analyst/technical/auditor did to develop their recommended positions and how the negotiator developed the pre-negotiation position. Finally, the pre-negotiation clearance should demonstrate that the negotiator is adequately prepared to enter negotiations, that adequate facts have been obtained, that these facts have been evaluated and that the judgments made in arriving at the pre-negotiation objective are sound. Necessary fact-finding should be completed to support the negotiation objective.

(2) Post-negotiation business clearance. The purpose of the post-negotiation business clearance is to demonstrate that the business/pricing agreement reached is a fair and reasonable one and to complete the historical record concerning the acquisition initiated in the pre-negotiation business clearance. The post-negotiation business clearance shall complement the cost and price analysis presented in the pre-negotiation business clearance by presenting additional facts, if any, obtained during negotiation which affected the judgments made in the pre-negotiation business clearance and shall justify differences between the pre-negotiation business

clearance objective and the negotiated settlement. Negotiations should be undertaken promptly after approval of the pre-negotiation business clearance. Upon completion of negotiation, the post-negotiation business clearance shall set forth in detail the negotiation results obtained. NO COMMITMENT SHALL BE MADE TO A PROSPECTIVE CONTRACTOR PRIOR TO OBTAINING APPROVAL OF THE POST-NEGOTIATION BUSINESS CLEARANCE MEMORANDUM.

(b) Competitive acquisitions.

(1) Pre-negotiation business clearance. The pre-negotiation business clearance documents the technical and cost/price evaluation, the basis for determining the competitive range, and the areas for discussions with offerors determined to be within the competitive range. Competitive range determinations may be presented in the pre-negotiation business clearance or may be presented in a separate business clearance for competitive range only. A business clearance supporting the competitive range determination must be approved before any offeror is notified that its proposal was determined to be outside of the competitive range and no longer eligible for award. Technical and/or cost discussions shall not be held with any offerors prior to approval of the pre-negotiation business clearance or a competitive range clearance. Clarifications as defined in FAR 15.601 may be obtained prior to the approval of the pre-negotiation or competitive range business clearance.

(2) Post-negotiation business clearance. The post-negotiation business clearance documents the events leading to the request and receipt of the best and final offers, the technical and cost/price evaluation thereof, the rationale supporting the source selection decision and the determination that the award price is fair and reasonable.

5201.690-3 Waiver of post-negotiation business clearance.

In individual cases, a waiver of the post-negotiation business clearance may be requested from the approval authority. This request would normally be a part of the pre-negotiation business clearance. When a waiver has been granted, a brief memorandum for the record shall be prepared to address compliance with the limitations, if any, prescribed in the waiver; document the results of the negotiation, including the information required by 5201.690-9(c), Section XII, subparagraph (c) (5); and address the post-negotiation clearance compliances of 5201.690-9(c), Section XI.

5201.690-4 Review and approval of business clearances.

(a) Each HCA shall establish written procedures for the review and approval of pre-negotiation and post-negotiation business clearances covering the types of contract actions identified in 5201.690-5. These procedures shall ensure that the approval authority is at an appropriate level higher than the individual assigned to the negotiations. In establishing approval thresholds, if any, the clearance dollar value shall be based on total overall value, including all options. For those actions which cover an incentive contract, the clearance dollar value shall be determined by the value of the total target price. For CPAF contracts, it shall be the value of the sum of the cost, base fee and one half of the award fee. For letter contracts, advance acquisition contracts, long lead-time modifications, and basic ordering agreements, the clearance dollar value shall be based on the total estimated definitized value.

5201.690-5 Types of contract actions requiring business clearance.

Pre-negotiation and post negotiation business clearances shall be prepared and approved for the following contract actions (except those following the small purchase and other simplified purchase procedures of FAR Part 13):

(a) Negotiated contracts (including indefinite-delivery contracts) or contract modifications for the acquisition of supplies or services not within the scope or under the terms of an existing contract.

(b) Undefined contract actions (UCAs) as defined in DFARS 217.7401.

- (c) Competitive range determinations.
- (d) Basic ordering agreements (BOA), except that in the event the BOA does not establish any pricing arrangements for orders to be issued thereunder, the approval authority may authorize the use of a memorandum for the record.
- (e) Modifications and changes issued pursuant to contract clauses such as those entitled "Changes," or "Government Property," or other contract provisions, except that for such modifications and changes under \$100,000, the approval authority may authorize the use of a memorandum for the record documenting any equitable adjustment in a manner similar to 5201.690-9(c), Section V.
- (f) The exercise or pricing of an unpriced, maximum or percentage - base allocation option.
- (g) Retroactive price redetermination after completion.
- (h) The definitization of any action issued under (b) or (e) above.

5201.690-6 Business clearances for advance agreements on the treatment of special or unusual costs.

(a) Business clearance approval by APIA-PP is required, regardless of dollar value, for advance agreements on particular cost items.

(b) The following information is required for business clearances covering advance agreements on the treatment of special or unusual costs as set forth in FAR 31.109. Documentation supporting the proposed advance agreement shall be forwarded in time to reach APIA-PP at least 30 days prior to any scheduled negotiation meeting with the contractor.

(1) A summary of the contractor's proposal containing adequate data and supporting rationale as considered appropriate to support the proposed advance agreement, including the time period to be covered by the agreement;

(2) Applicable reports from members of the Government review team, including the DCAA auditor, technical staff, corporate ACO, price analysts, etc., setting forth the results of their evaluations;

(3) Any other relevant technical or advisory reports or analyses or correspondence;

(4) Anticipated date, place and attendees for negotiation;

(5) Summary of the contractor's proposal, amendments (if any) and supporting rationale;

(6) Summary of DCAA, CACO, technical and other advisory report findings and recommendations;

(7) Recommended Government position and rationale;

(8) Comparative schedules showing relative positions of the contractor and the Government with an explanation of the areas of difference and the rationale supporting the respective positions;

(9) Any other additional supporting data or comments considered necessary to assure that the proposed advance agreement is equitable and in the Government's best interest; and

(10) Summary of the proposed disposition of all DCAA recommendations and the underlying rationale. This summary should comply with the provisions of DoD Directive 7640.2 dated 12 February 1988.

(c) Reporting requirements. Documentation of all negotiated advance agreements executed shall be forwarded within 15 days of their execution by the cognizant Navy contracting officer or SUPSHIP to APIA-PP together with appropriate supporting documents.

5201.690-7 Business clearance for contracts for public utility services.

(a) Business clearance approval by Headquarters, NAVFACENGCOM is required, regardless of dollar value, for all contracts for public utility services (see Subpart 5241).

5201.690-8 Special business clearance requirements.

(a) HCAs shall establish business clearance approval levels and procedures for the following:

(1) Final indirect cost rates agreements.

(2) Actions relating to Cost Accounting Standards as follows:

(i) Prior to negotiating an equitable adjustment for mandatory changes in contractor cost accounting practices covered by paragraph (a)(4)(i) of the clause at FAR 52.230-3, Cost Accounting Standards;

(ii) Prior to negotiating an equitable adjustment for an agreed-to change in contractor cost accounting practices covered by paragraph (a)(4)(iii) of the clause at FAR 52.230-3 or paragraph (a)(3) of the clause at FAR 52.230-5 Disclosure and Consistency of Cost Accounting Practices, when the change in the accounting practices:

(A) Is the result of a corporate merger, acquisition, sale or transfer of assets, or reorganization;

(B) Is the result of internal corporate, divisional, or business unit reorganization;

(C) Represents a major restructuring of the contractor's existing financial structure or accounting system and practices; or

(D) Is estimated to impact (by increase, decrease or offset) net costs paid by the United States by a minimum of \$100,000 for any one contract or a minimum of \$1,000,000 for contracts in the aggregate. The situations that (A) through (D) above address typically require the negotiation of advance agreements which are addressed at 5201.690-6. Resolve any doubt by contacting APIA-PP prior to initiating equitable adjustment discussions with the contractor.

(iii) Prior to issuing, pursuant to FAR 30.602-2, a final determination of compliance or noncompliance paragraphs (a)(2) or (a)(3) of the clause at FAR 52.230-3 or with paragraphs (a)(1) or (a)(3) of the clause at FAR 52.230-5.

5201.690-9 Content of pre-negotiation and post-negotiating business clearances.

(a) The HCA is authorized to prescribe simplified content and format requirements for pre-negotiation and post-negotiation business clearances for contract actions not in excess of \$500,000.

(b) The Business Clearance numbering instructions are in 5201.690-10. Section I through X constitute the pre-negotiation Business Clearance and Section I with Sections XI and XII constitute the post-negotiation Business Clearance. When requesting authority to enter into negotiations, Sections I through X shall be submitted for approval. When requesting approval of the negotiated price, Section I with Sections XI and XII shall be submitted for approval.

(c) [Table 5201-90](#) provides the required format and the type of information which should be submitted with each clearance. Those elements within the format which are not pertinent to a particular business clearance should not be included. The business clearance memorandum shall fully explain the cost/price aspects of the proposed acquisition including the technical and cost/price evaluation where the source selection process is used; and properly address the findings and recommendations of the audit report. It should briefly outline the contractor's proposal, subsequent negotiations and steps taken by the negotiator to secure adjustment or explanation of any questionable features of the proposed contract pricing, terms and conditions, together with the results obtained.

TABLE 5201-90

FORMAT AND CONTENT FOR BUSINESS CLEARANCE

SECTION I. Business Clearance - Cover and Signature Page. NAVSO 4310/1(3/86) shall be completed and submitted when requesting pre-negotiation and post-negotiation business clearances. The post-negotiating information required on the cover and signature page will be completed when requesting approval of the negotiated price.

SECTION II. Pre-negotiation Compliances (for competitive acquisition, document specific information for each offeror):

(a)(1) Determinations and Findings (D&F) to exclude a source (see FAR 6.202 and FAR Subpart 1.7) number _____ was approved on _____ by _____. Attach a copy.

(2) Determination and Findings (D&F) for the Public Interest circumstances permitting other Than Full and Open Competition (see FAR 6.302-7 and FAR Subpart 1.7) number _____ was approved on _____ by _____. Attach a copy.

(3) A justification for other Than Full and Open Competition (see FAR 6.303) number _____ was approved on _____ by _____. Attach a copy.

(b) Acquisition Plan (AP) Number _____ was approved on _____ by _____. This acquisition is in conformity with the approved AP. Yes _____. No _____. N/A _____. If No, explain. (FAR Part 7)

(c) Synopsis of this acquisition was released to Commerce Business Daily.

Yes _____. No _____. If No, explain. (FAR 5.202).

(d)(1) Certification of personal services approved. Yes _____. No _____. N/A _____. If No, explain.

(2) Authority to contract out services approved by _____ on _____. N/A _____.

(e) Pre-Award Disclosure Statement - Cost Accounting Practices and Certification was executed on _____. (FAR 30.201-3). The cognizant ACO determined that said Disclosure Statement was current, accurate and complete on _____.

(f) Field Pricing Support was waived. Yes _____. No _____. N/A _____. (DFARS 215.805-5).

(g) The Contractor has an adequate Accounting System as determined by CAO/DCAA on _____.

(h) The Contractor has an approved Purchasing System as determined by the ACO on _____. (FAR 44.305)

(i)(1) The Contractor has submitted SF 1411, Contract Pricing Proposal Cover Sheet. Yes _____. No _____. If No, explain.

(2) SF 1411, Contract Pricing Cover Sheet, for major subcontract(s) has been submitted in accordance with FAR 15.806-2. Yes _____. No _____. N/A _____. If No, explain.

(3) Assist audits have been requested or received. Yes _____. No _____. N/A _____. If No, explain.

(j) Pre-contract costs were approved by _____. N/A _____.

(k) An approved Make or Buy Plan is on file. Yes _____. No _____. N/A _____. If No, explain.

(l) EEO compliance has been requested or obtained. Yes _____. No _____. If No, explain.

(m) The prospective contractor has been determined to be responsible within the meaning of FAR Subpart 9.1 and is financially stable. Yes _____. No _____. If No, explain.

(n) This clearance complies with the provisions of DoD Directive 7640.2 dated 12 February 1988. Yes _____. No _____.

(o) GSA Delegation of Procurement Authority (DPA) Acquisition was approved on _____; attach a copy. N/A _____.

(p) ASN (RD&A) Approval/Authorization for ADP Acquisition was approved on _____; attach a copy. N/A _____.

(q) A facilities determination and findings (D&F) has been made in accordance with FAR 45.302-1. Yes _____. (attach a copy) No _____. N/A _____. If No, explain.

(r) Identify any other applicable compliances.

SECTION III. Summary of Key Documents. Identify by reference and date each key document.

- (a) Solicitation_____
- (b) Contractor(s) Proposal(s)_____
- (c) DCAA Report(s)_____
- (d) ACO Report(s)_____
- (e) Technical Advisory Report(s)_____
- (f) Pre-Award Survey_____
- (g) Other_____

SECTION IV. Pre-negotiation introduction. The pre-negotiation clearance shall document compliance with law, regulations and policy and shall become the record showing exercise of good business judgment. It shall be a self-sustaining document which shows the contractor's methodology and how the proposal position was developed, how the field price/technical/ audit reviews developed their recommendations, and what the negotiator did in developing an independent pre-negotiation position(s) considering the field pricing, audit, and technical analyses and recommendations. An understanding of the development of each position is important in order to be adequately prepared for negotiations. The Armed Services Pricing Manual (ASPM #1) is a detailed pricing manual which discusses in depth the pricing manual which discusses in depth the pricing techniques and factors that should be considered when developing the negotiation position, with examples of such factors that might be used. For competitively negotiated acquisitions using the source selection process, the pre-negotiation clearance shall include the source selection process as well as section "M" of the solicitation and shall also discuss the evaluation criteria and the basis for award contained in the solicitation, set forth a summary schedule of offerors' prices, the technical and cost evaluation and, if used, the assigned raw scores and weighted scores with specific reference to the applicable key documents appended to the business clearance, a determination and supporting discussion of offerors determined to be within and outside the competitive range, and a summary of the technical and cost deficiencies to be discussed with offerors selected to participate in the discussions. If price analysis is used to develop the pre-negotiation position, substitute price analysis for cost analysis as appropriate.

- (a) Exhibits/Attachments
List in order as they appear in body of clearance.
- (b) Background
 - (1) Procurement history.
 - (2) Negotiation environment (definitizing Letter Contract, etc.).
- (c) Source Selection
 - (1) Discuss rationale for selection of source(s).
 - (2) Extent competition solicited and secured.
 - (3) If circumstances warrant, discuss financial stability of contractor.
- (d) Type of contract.
 - (1) Type used - rationale.
 - (i) Discuss considerations made in determining the type of contract. Discuss the rationale for use of proposed contract type and unsuitability of other contract types.
 - (ii) Discuss the technical, schedule and cost risk involved.
 - (2) For incentive or redeterminable contracts discuss all of the pricing provisions.

SECTION V. Pre-Negotiation Cost Analyses. Provide a summary comparison in columnar format of (i) the contractor's proposal; (ii) the audit recommendations, when audits are requested (identify and detail areas of nonconcurrency with audit recommendations and provide adequate justification for the nonconcurrences (see 5242.191; (iii) the field recommendations (when requested); and (iv) the pre-negotiation position by using the SF 1411, Contract Pricing Proposal Cover Sheet, and FAR Table 15-2 elements of cost. Parts 1 through 8 of this section identify factors under major cost elements which should be discussed in detail, where applicable, to show how the pre-position was developed. Before commencing the written analysis of each part, summarize the respective contractor, audit, field/technical and pre-negotiation positions at the appropriate level to which this element of cost was analyzed, e.g.,

material at the SF 1411 and FAR Table 15-2 level in the opening chart would usually be analyzed and thus summarized in the material section (Part 1) at the raw material, purchased parts and subcontracted items level. At all times, the bottom line summary of each Part should track to the SF 1411 and FAR Table 15-2 element of cost chart. Use of detailed hour and rate analysis, summary charts, graphs and computer printouts are encouraged. They should be included or attached as an exhibit to the clearance.

(a) Material.

- (1) Summary of source and contractor's estimates - firm purchase orders, quotes, competition, catalog items, estimates, prior history.
- (2) Attrition/Scrap/Variance factors applied to the net bill of material.
- (3) Impact of Make/Buy changes.
- (4) Summary of field sampling technique. Dollar percentage of items reviewed to total dollar value of bill of material.
- (5) Historical negotiation reduction factor prime contractor experiences when converting vendor quotes to firm purchase orders.
- (6) Review of prime contractor negotiator's analysis for items over \$500,000. Discuss the buyers use of actual cost data to develop negotiation positions.
- (7) Utilize most recent historical actual cost for analysis of items over \$500,000.
- (8) Compare unit prices for items over \$500,000 with historical prices.
- (9) Discuss findings of assist audits.
- (10) Identity the quantity and value of recurring and nonrecurring material.
- (11) Discuss contractor's efforts to combine common parts with subject effort and other programs in-house. Identify the percent of material under subject acquisition which is being bought under corporate pricing agreements.
- (12) Percentage of competition of purchase orders and subcontracts.
- (13) Discuss justification for subcontract type.

(b) Material Overhead.

- (1) Summary of contractor proposed rates and basis for rates per year. If negotiated forward pricing rate agreement (FPRA) (see FAR 15.809) exists, identify period covered by the agreement.
- (2) If no negotiated agreement exists, state field recommended rates by year and reasons for variances from contractor proposed rates.
- (3) Discuss historical rate actuals. If forward pricing rate agreement is in effect, are actuals tracking to the negotiated rates? If actuals are not tracking, discuss coordinated action with ACO.
- (4) Identify material base to which the rate applies.
- (5) Summary of negotiator's analysis in determining rates for the development of the pre-position.

(c) Direct Labor.

- (1) Summary of contractor's approach and basis for estimate by individual labor category.
- (2) Provide historical actual hours per each labor category.
- (3) Identify recurring and non-recurring hours.
- (4) Identify hours which are quantity related and which are time related.
- (5) Provide manloading charts, if applicable.
- (6) Summary of negotiator's approach to develop pre-position.
 - (i) For Manufacturing - show learning curve, provide actual points, midpoints, slope of regression and coefficient of determination (R^2) of regression. This can be accomplished on hours/unit basis or standards vs variance/realization factor or other acceptable estimating parameter. Address use or planned use of work measurement standards.
 - (ii) For Engineering - discuss period of performance and task completion for level of effort. State how the efforts are charged, overlapping or blocked. Identify recurring and nonrecurring hours. Historically, how does engineering reduce over a period of time? Use actuals and relate appropriate relationship to time or quantity, i.e., hours/system, hours/month, man/month, etc.
 - (iii) Manufacturing Support - discuss time/quantity related nature of work. Relate to what direct task supports. Analyze contractor estimating relationships. Are they supported by current actuals? What is the effect of increases or decreases in production rate on support levels? How do support hours reduce over a period of time?

(iv) Identify any conversion factors to get from a staffing level (head count) to hours. Compare these conversion factors with the factors used by the contractor to develop overhead rates.

(d) Labor Rates.

(1) Summary of contractor's proposed rates per year and basis for development.

If negotiated forward pricing agreement exists, identify period covered by the agreement. Discuss effect of union agreement, if applicable, on forward pricing rate agreement established. Identify when Cost of Living Adjustments (COLAS) are scheduled.

(2) Address rates of increase for executive compensation, salaries, wages and employee benefits as it applies to the planned aggregate of all types of labor (both direct and indirect) increases (e.g., Cost of Living Allowances, in-grade increases, merit increases and performance bonuses) as well as to employee fringe benefits (e.g., lower deductible for employee's share of medical and dental insurance premiums, changes in employer's share of salaried savings plans, increased vacation/sick leave/holiday). Excluded are new hires, promotions and normal attrition.

(3) If no negotiated forward pricing rate agreement exists, discuss field recommended rates by year and reasons for variance from contractor proposed rates.

(4) Discuss historical actuals. If negotiated forward pricing agreement is in effect, are the actuals tracking to the negotiated rates? If actuals not tracking, discuss coordinated action with ACO.

(5) Summary of the negotiator's analysis for determining rates used to develop the pre-negotiation position. Identify labor hours to which rates apply. Show the build-up of the pre-negotiation direct labor dollar position by application of labor rates to labor hours developed in (c) above. These direct labor dollars should track to the appropriate direct labor dollar category in the summary comparison which opens the Pre-negotiation Cost Analysis Section V.

(e) Overhead Rates.

(1) Summary of contractor's proposed rates per year and basis for estimate.

If negotiated forward pricing rate agreement exists, identify period covered by the agreement.

(2) If no negotiated agreement exists, discuss field recommended rates by year and reasons for variances from contractor proposed rates.

(3) Discuss historical actuals using correlative analysis of the base to experience rate. If there is a negotiated forward pricing rate agreement in effect, are the actuals tracking to negotiated rates? If actuals are not tracking, discuss coordinated action with ACO.

(4) Summary of the negotiator's analysis for determining composite rates used to develop the pre-negotiation position. Show the build-up of the applicable pre-negotiation overhead dollar position by the application of the overhead rates to the direct labor dollars developed in (d) above. These overhead dollars should track to the appropriate overhead dollar category in the summary comparison which opens the Pre-negotiation Cost Analysis Section V.

(5) Discuss any ceilings on rates.

(6) Identify and discuss wage escalation included in rates.

(f) Other Direct Charges.

(1) Summary of contractor's proposed expenses and basis for estimate.

(2) Summary of field recommendation.

(3) Negotiator's analysis supported by actuals and historical data.

(4) Summary of ODC dollars should track to summary comparison which opens the Pre-negotiation Cost Analysis Section V.

(g) G&A

(1) Same as (e) "Overhead Rates" (1) through (6) above with the exception that reference to "labor dollars" is changed to "direct costs".

(h) Cost of Money.

(1) Summary of contractor proposed factors per year.

(2) Field recommended factors.

(3) Complete DD Form 1861.

(i) Price Analysis.

Where the proposed effort is a "follow/on" effort (similar/identical earlier contractual efforts), include as an attachment, the most current Cost Performance Report (CPR), Contract Funds Status Report (CFSR), or the equivalent for the earlier efforts (up to 3 prior contracts). Discuss how these reports were utilized in

developing the pre-negotiation position. In those cases where the proposed effort is a definitization effort, these reports are to be furnished for the 3 prior contracts as well as for the most recent reports available under the contract to be definitized.

SECTION VI. Pre-negotiation Profit/Fee Analysis.

- (a) Discuss contractor's proposed profit/fee rate.
- (b) Support pre-negotiation profit/fee rate with completed DD Form 1547 and discuss use of each assigned weight, or discuss applicable exemption.

SECTION VII. Pre-negotiation Incentive/Award Fee Structure.

- (a) Share ratio under/over target and reasonable.
- (b) Min/max fee structure and rationale.
- (c) Point of Total Assumption (PTA) analysis.
- (d) Ceiling.
- (e) Range of cost incentive effectiveness (RIE) for CPIF.
- (f) Special requirements for contracts containing award fee provisions. The clearance should clearly identify the program, requirements, rationale for use of award fee and a discussion on the unsuitability of more advanced contract types. The clearance should include an award fee plan that provides the following information as a minimum:

- (1) Title of Fee Determining Official and functional makeup of the award fee board;
- (2) Government's total estimate, projected base fee percentage and total award fee pool available. This should address program funding to ensure funds are available to cover the total estimated cost, base fee and total award fee pool;
- (3) Contract period of performance, number of award fee periods projected, the length of each period, estimated costs to be incurred during each period and the projected award fee available during each period;
- (4) Rationale for selection of contractor performance evaluation categories and criteria; (NOTE: All CPAF contracts or contracts incorporating award fee provisions must include a category on cost and criterion for cost control).
- (5) Ratings planned under performance evaluation report criteria to include range of scores that would place a contractor in each rating category and a definition for each performance evaluation criteria rating;
- (6) Identify the planned weighting factors for performance evaluation categories and criteria in each award fee period. Explain the rationale for planned weighting factors consistent with program objectives during each period; and
- (7) Attach copy of planned award fee provisions to be included in the contract.

SECTION VIII. Pre-negotiation Special Provisions. Discuss any special provision which may affect price, such as the examples listed below:

- (a) EPA
- (b) Government Furnished Equipment.
- (c) Controverted costs/re-opener clauses.
- (d) Unusual contract financing clauses, i.e., milestone billings, advance payments etc.
- (e) Small business incentive.
- (f) Deviations from FAR, DFARS, NAPS or other DoD or Departmental regulations.
- (g) Warranty provisions to include cost benefit analysis.
- (h) Design to Cost.
- (i) Any non-standard clause having significant cost or administrative impact on offerors/contractors (see 5201.304(4)(D)).

SECTION IX. Pre-negotiation Other Information. Address other information pertinent to the business clearance which is not included in the sections above, such as the examples listed below:

- (a) Government Furnished Equipment/Material.

- (b) Comparison of pre-position to historical prices in constant and then year dollars.
- (c) If applicable, discuss exemption to Buy American Act.
- (d) Is data for competitive reprocurement being purchased? Discuss cost, delivery and whether we are getting unlimited rights or not.
- (e) If converting a Letter Contract or an existing commitment give the cost incurred information and state how it was used.
- (f) If applicable, discuss the requirement of FAR 45.306 and 45.307 with regard to the acquisition of special tooling and special test equipment, respectively.
- (g) Identify attendees at pre-negotiation and fact finding session by name, position and organization.
- (h) Discuss extent of DCAA auditor attendance at pre-negotiation and fact finding sessions, and plans for DCAA auditor attendance at negotiations. Where the contracting officer believes that auditor attendance at negotiation is necessary, and the auditor has declined to attend, discuss the measures taken to pursue higher level management assistance in obtaining auditor attendance.

SECTION X. Pre-negotiation Attachment. These shall include the following when applicable:

- (a) Weighted Guidelines DD Form 1547.
- (b) Cost of Money DD Form 1861.
- (c) Incentive share arrangement and/or graph or determination provision.
- (d) Non-standard clauses affecting price.
- (e) "Evaluation for Award" section of the solicitation, if competitive.
- (f) The competitive evaluation with scoring, if used.
- (g) The source selection criteria with weights and evaluation board composition.
- (h) Copy of field reports.
- (i) Copy of SF 1411 and supporting schedules or attachments.
- (j) Copy of written request for DCAA auditor attendance and/or declination of attendance by DCAA auditor.
- (k) For underfinitized contract actions (UCAs), address compliance with the limitations set forth in DFARS/NAPS 217.7404 and provide support for the not-to-exceed price.
- (l) For BOA orders with a not-to-exceed price, address compliance with the limitations set forth in DFARS 216.703 and provide support for the not-to-exceed price.
- (m) For change orders with a not-to-exceed price, address compliance with 5243.204-90 and provide support for the not-to-exceed price.

SECTION XI. Post-negotiation Clearance Compliances.

(a) COMPLIANCES: (If Applicable).

(1) The Contractor has submitted a "Certificate of Current Cost or Pricing Data" dated _____. (FAR 15.804-4)

(2) Type of Contract Determination & Finding Number_____has been approved by the Contracting Officer. (DFARS 216.301-3(c) and FAR 16.403(c))

(3) Preaward clearance for Equal Employment Opportunity compliance has been obtained (see FAR 22.805) and will be included in the definitive contract file. Yes ____ No _____. If No, explain.

(4) Subcontracting plan is required. (FAR 19.702) Yes_____ No_____. If no, explain.

(b) NEGOTIATIONS:

(1) Negotiations were conducted with the contractor from_____through_____. The following participated in negotiations.

(2) Discuss attendance/non attendance of DCAA auditor at negotiation and document any change to plans identified in the pre-negotiation clearance for DCAA auditor attendance at negotiations.

SECTION XIII. Post-negotiation Summary.

(a) References and Exhibits/Attachments. List in order as they appear in the body of the post/negotiation clearance.

(b) Background.

(1) Update events since pre-negotiation clearance approved.

(2) Discuss when pre-negotiation clearance approved, conditions of the approval, how these conditions were resolved and where in the body of the clearance these conditions are discussed.

(3) Documentation as per 5242.191(c)(2)(viii).

(c) Results of Negotiation

(1) Provide a summary comparison in columnar format of the respective positions of contractor(s) proposal(s), audit report, field/technical recommendation, pre-negotiation objective(s), and post-negotiation position(s), using the SF 1411 and FAR Table 15-2 elements of cost.

(2) Discuss rationale for differences in pre-negotiation and post-negotiation positions.

(3) Include any supplemental cost data obtained, or a summary thereof, such as written documents or oral presentations of actual cost data (material prices, labor hours, labor rates, overhead rates, etc.).

(4) Include an evaluation of the supplemental data, its effect upon cost trends, and the degree to which it supports or justifies the prices negotiated with the contractor.

(5) Include a discussion on the extent to which the contracting officer relied on cost or pricing data submitted and certified by the contractor. There must be sufficient details included in the clearance to avoid difficulties in determining what cost and pricing data were relied on should defective pricing data be subsequently alleged.

(6) Address rationale for changes in non-standard clauses or new non-standard clauses added during negotiations. Attach clauses.

(7) For competitive acquisitions, discuss source selection evaluation factors and other considerations which support the award recommendation.

(8) Discuss how any credit for participation in local Private Industrial Councils (PIC) under the Job Training Partnership Act is reflected in the agreed upon price.

(d) Auditor Attendance. Discuss extent of DCAA auditor attendance in negotiation sessions. If the audit report specifically recommended auditor attendance, but the contracting officer did not invite the auditor to attend, provide an explanation for contracting officer actions.

(e) Other Information. Provide other information pertinent to the clearance not previously addressed.

(f) Attachments - These shall include:

(1) Certificate of Current Cost of Pricing Data - as required by FAR 15.804-4.

(2) DD Form 1547.

(3) DD Form 1861.

(4) Incentive share arrangements.

(5) New or revised non-standard clauses.

(end of Table 5201-90)

5201.690-10 Business clearance numbering instructions.

(a) Numbering.

(1) Justifications (required by FAR 6.303), determination and findings (D&Fs) (required by FAR 6.202 and 6.302-7) and business clearances shall be numbered with serial numbers and with symbols as set forth in (b) below. Any contracting office should contact APIA-PP for the assignment of a symbol number, if one has not previously been assigned.

(2) When both business clearances and justifications/D&Fs are required on a single contract, the justification/D&F shall bear the earlier number and the business clearance shall bear the same basic number with the addition of a decimal digit. For example, on a new contract proposed to be negotiated by NAVAIRSYSCOM, the

justification would be number "AIR 10327" and the business clearance covering the request for authority to execute the same contract would be number "AIR 10327.1". If subsequent actions on a contract require either an additional justification/D&F or an additional business clearance, any such additional clearance should bear the same prefix and basic number plus the next consecutive decimal digit. The justification/D&F for any particular contract action always bears a lower decimal digit than the business clearance for the same action. (For example, after the NAVAIRSYSCOM contract above was issued and the scope of the contract was changed so that an amendment was necessary in an amount requiring clearance, then the new justification would be numbered "AIR 10327.2" and the business clearance covering that amendment would be numbered "AIR 10327.3").

(3) An exception to the rule set forth in (2) above would be in a case of clearances proposing contracts negotiated under the authority of a class justification. Such business clearances should be assigned new basic numbers and should refer to the class justification number. For example, if NAVAIRSYSCOM submitted a class justification numbered "AIR 10210" for Project X, and this justification was approved, then when NAVAIRSYSCOM exercises this authority to let a contract requiring a business clearance, the business clearance would be numbered with the next unused consecutive number in the NAVAIRSYSCOM series which might be "AIR 10285" and would cite the class justification number "AIR 10210" as the authority for contracting by other than full and open competition. Any business clearance covering a subsequent amendment to the same contract should be numbered "AIR 10285," plus the appropriate decimal digit, and should always cite the appropriate class justification number.

(4) If a resubmission of any business clearance or any justification (either an individual or a class) is required, such resubmission shall bear the same prefix and basic number plus the next appropriate unassigned decimal digit.

(b) Symbols and serial numbers.

(1) Clearance symbols for justifications required by FAR 6.303, determination and findings required by FAR 6.202 and 6.302-7, or business clearance are as follows.

Command or Office	Symbol
Naval Academy, Annapolis, MD	AC
Naval Air Systems Command Headquarters	AIR
Aviation Supply Office, Philadelphia, PA	ASO
Puget Sound Naval Shipyard, Bremerton, WA	BR
Charleston Naval Shipyard, Charleston, SC	C
Carderock Division, Naval Surface Warfare Center, Bethesda, MD	CAR
Naval Air Station, Corpus Christi,	CC
Naval Supply Center, Charleston, SC	CH
Naval Air Warfare Center, Weapons Division, China Lake, CA	CL
Crane Division, Naval Surface Warfare Center, Crane, IN	CR
Dahlgren Division, Naval Surface Warfare Center, Dahlgren, VA	DL
Naval Facilities Engineering Command Headquarters	FAC
Naval Ship Repair Facility, Guam, Mariana Island	GU
Naval Supply Depot, Guam, Mariana Island	GUAM
Port Hueneme Division, Naval Surface Warfare Center, Port Hueneme, CA	HUE
Indian Head Division, Naval Surface Warfare Center, Indian Head, MD	IH
Naval Air Warfare Center, Aircraft Division, Indianapolis, IN	IND
Naval Command, Control and Ocean Surveillance Center, West Coast In-Service Engineering Division, San Diego, CA	ISE
Information Technology Acquisition Center, Washington, DC	ITAC

Naval Supply Center, Jacksonville, FL	JAX
Naval Ordnance Station, Crane Division, Naval Surface Warfare Center, Louisville, KY	KY
Naval Air Warfare Center, Aircraft Division, Lakehurst, NJ	LAK
Naval Regional Contracting Center, London Detachment Headquarters, United States Marine Corps	LON MC
Marine Corps Systems Command	MCSC
Military Sealift Command	MSC
Naval Air Warfare Center, Weapons Division, Pt. Mugu, CA	MU
Naval Regional Contracting Center, Naples	NAP
Naval Command, Control and Ocean Surveillance Center, Research, Development, Test and Evaluation Division, San Diego, CA	NCOSC
Navy Exchange Command, Staten Island, NY	NEX
Naval Supply Center, Norfolk, VA	NF
Navy Oceanographic Office, Bay St. Louis, MS	NHO
Naval Military Personnel Command	NMPC
Strategic Systems Project Office	NOSP
Navy Petroleum Office, Alexandria, VA	NPETOFF
Naval Research Laboratory, Washington, DC	NRL
Naval Supply Center, Puget Sound, Bremerton, WA	NSC, BR
Naval Training System Center, Orlando, FL	NTSC
Naval Undersea Warfare Center Division, Newport, RI	NUWC
Naval Supply Center, Oakland, CA	OAK
Office of Naval Research	ONR
Portsmouth Naval Shipyard, Portsmouth, NH	P
Coastal Systems Station, Dahlgren Division, Naval Surface Warfare Center, Panama City, FL	PAN
Naval Air Station, Patuxent River, MD	PAX
Naval Supply Center, Pensacola, FL	PEN
Naval Supply Center, Pearl Harbor, HI	PH
Naval Regional Contracting Center, Philadelphia, PA	PHL
Naval Air Warfare Center, Aircraft Division, Patuxent River, MD	PR
Naval Regional Contracting Center, San Diego	SAN
Naval Regional Contracting Center, San Diego, Long Beach Detachment, Long, Beach, CA	SAN/LB
Naval Regional Contracting Center, San Diego, Mare Island Detachment, Vallejo, CA	SAN/MI
Naval Supply Center, San Diego	SD
Naval Sea Systems Command Headquarters	SEA
Space and Naval Warfare Systems Command Headquarters	SPAWAR
Ships Parts Control Center, Mechanicsburg, PA	SPCC
Navy Supply Depot, Subic Bay	SUB
Naval Regional Contracting Center, Washington, DC	WA
Naval Air Warfare Center, Aircraft Division, Warminster, PA	WAR
Naval Surface Weapons Center, Dahlgren Division, Detachment White Oak, Silver Spring, MD	WOL
Naval Supply Depot, Yokosuka, Japan	YOK

(2) The initial serial number to be used by all above-listed activities on justifications, determination and findings, or business clearances is 10,000. All subsequent justifications, determination and findings, or clearances are to be numbered consecutively in the 10,000 series without regard to date of submission.

5201.691 Tuition for civilian employee training.

Contracts which require the payment of tuition for civilian employees from appropriated funds shall include a proper reference to the authority approving the tuition payment. Civilian Personnel Instruction (CPI) 410.6 dated 1 November 1988 includes procedures which will be followed when requesting this approval and when providing training under the procedures established for DD 1556, "Request, Authorization, Agreement, Certification and Reimbursement." The Contracting Officer is responsible for ascertaining, prior to execution, that each proposed contract requiring the Government to pay tuition for civilian employees is within the scope of such approval.

5201.692 Procurement Management Review.

5201.692-1 Purpose.

(a) SECNAVINSTs 4200.25C dated 17 December 1984 and 5400.15 dated 15 August 1991 assign responsibilities and set forth procedures for the operation of the Procurement Management Review program.

(b) The objective of the program is and effectiveness of the Contract Management process for both contracting and contract administration functions. Procurement management reviews shall be used both to ensure individual activity compliance with established criteria and to improve policies and procedures. The PMR program is utilized to assist the ASN (RD&A) in his role as the Navy's Senior Procurement Executive by performing such tasks as:

(1) Evaluating the performance of the procurement system and certifying to the Secretary of the Navy that the procurement system meets established criteria;

(2) Evaluating the training and career development of the procurement workforce;

(3) Evaluating the effectiveness of competition initiatives; and

(4) Evaluating criteria for the designation of contracting officers and their representatives.

(c) The interim DoD Manual (January 1984) for the Defense Acquisition Management Review Program will be used as the guideline for the conduct of reviews. Recommendations shall be categorized as those related to broad procurement policy issues; and those that are procedural (i.e., unique to a particular buying activity).

5201.692-2 Responsibilities

(a) The APIA-PP shall:

(1) Conduct the procurement management review program for the NSPE.

(2) Conduct PMRs of the contracting operations of the Systems Commands; MSC; Office of Naval Research; Headquarters U.S. Marine Corps; Marine Corps Research, Development and Acquisition Command; Naval Telecommunications Command; and other Navy contracting activities designated by higher level authority.

(b) HCAs are responsible for PMRs of their field contracting activities.

(c) The Commander, Naval Supply Systems Command (COMNAVSUPSYCOM) is responsible for PMRs of Navy Field Contracting System activities, and other activities as directed by APIA-PP or higher level authority.

(d) Fleet and Type Commanders are responsible for PMRs of afloat units. Such reviews may be a part of regularly scheduled Supply Management Inspections (SMIs).

5201.692-3 PMR requirements.

(a) Each contracting activity assigned PMR responsibility shall:

(1) Designate and identify to APIA-PP one person to serve as focal point for all PMR matters.

(2) Prepare and maintain, on an annual basis, a schedule of reviews including planned review dates. Each year, provide a copy to APIA-PP by 15 August. Forward revisions, as they occur, for activities with greater than \$25,000 procurement authority.

(3) Conduct PMRs of contracting activities at least every three years but preferably on a two year cycle or more frequently if necessary. Copies of PMR reports of activities with contracting authority greater than \$100,000 will be furnished to APIA-PP as they are completed.

(4) Ensure timely implementation of PMR recommendations under their cognizance and perform follow-up reviews to ascertain progress in correcting problems. Ensure satisfactory resolution of all PMR recommendations.

(5) Upon a determination of an unsatisfactory condition in a procurement operation (i.e., small purchase, large purchase, contract administration, etc.) resulting from a PMR, the reviewing entity shall submit copies of the report to the HCA with copies to the organization's line chain of command with a recommendation for adjustment to the activity's contracting authority (i.e., limit, reduce, or revoke). The HCA shall take action as appropriate including adjusting contracting authority. The HCA will then cause a formal follow-up review to be made within 60 days to determine if/when full authority can be restored. The HCA shall insure contracting support is provided when reductions/revocations are imposed. Copies of all correspondence relating to matters under this subparagraph shall be forwarded to APIA-PP.

(6) Submit annually to APIA-PP by 15 November, a summary of significant PMR findings, recommendations made, recommendations implemented, and the degree of success of each. The summary should also contain recommended policy or procedural changes which could result in the reduction of acquisition costs and improvement in the acquisition process.

(7) Provide ad hoc assistance as requested by APIA-PP for Joint Service Reviews of Defense Agencies and Navy reviews requiring additional technical expertise.

SUBPART 5201.7--DETERMINATIONS AND FINDINGS

5201.707 Signatory authority.

5201.707-90 Processing of Secretarial determination.

Each Request for Secretarial determination required by FAR or DFARS shall be submitted to APIA-PP in the form of a determination and findings.

5201.707-91 Legal review.

Each determination and findings (D&F), including class D&Fs where authorized, shall be reviewed by counsel for form and legality before the signature is obtained.

PART 5202

DEFINITIONS OF WORDS AND TERMS

SUBPART 5202.1--DEFINITIONS

5202.101 Definitions.

"APIA-PP" means the Deputy for Acquisition Policy, Integrity and Accountability; Office of the Assistant Secretary of the Navy (Research, Development and Acquisition).

"APIA-PP" means the Director, Procurement Policy; Office of the Deputy for Acquisition Policy, Integrity and Accountability; Office of the Assistant Secretary of the Navy (Research, Development and Acquisition).

"ASN(FM)" means Assistant Secretary of the Navy (Financial Management).

"ASN(RD&A)" means Assistant Secretary of the Navy (Research, Development and Acquisition).

"CCO" means the Chief of the Contracting Office". The CCO is the official who has overall responsibility for managing the entire contracting office and includes the principle deputy to such official.

"Deputy/Assistant Commander for Contracts" means the Deputy or Assistant Commander for Contracts at a Systems Command or their equivalent at the Headquarters, Naval Facilities Engineering Command; Headquarters, United States Marine Corps, Headquarters, Marine Corps Research, Development and Acquisition Command; Office of Naval Research; Military Sealift Command; Strategic Systems Programs; and the Information Technology Acquisition Center. It also includes the principal deputy for these officials.

"Director, SADB" means the Director, Small and Disadvantaged Business Utilization, Office of the Under Secretary of the Navy.

"DRPM" means Direct Reporting Program Manager.

"MSC" means the Military Sealift Command

"NAE" means the Navy Acquisition Executive. ASN (RD&A) is the NAE. "NAVAIRSYSCOM" means the Naval Air Systems Command

"NAVFACENGCOM" means the Naval Facilities Engineering Command.

"NAVSEASYS" means the Naval Sea Systems Command.

"NAVSUPSYSCOM" means the Naval Supply Systems Command.

"Navy or DoN" means the Department of Navy including the Marine Corps, unless otherwise specified.

"NFCS" means the Navy Field Contracting System (see 5201.601-90(d)).

"NSPE" means Navy Senior Procurement Executive. ASN(RD&A) is the NSPE.

"PEO" means Program Executive Officer.

"SPAWARSYSCOM" means Space and Naval Warfare Systems Commands.

"USD(A)" means Under Secretary of Defense (Acquisition).

"USD(A) DDP" means Under Secretary of Defense (Acquisition), Director, Defense Procurement.

PART 5203

IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

SUBPART 5203.1--SAFEGUARDS

5203.101 Standards of conduct.

5203.101-1 General.

(1) Navy contracting activities, purchasing offices and contract administration offices shall establish controls to ensure that a single individual performs only one of the following functions:

- (i) initiation of the requirement;
- (ii) award of contract or placement of order; and
- (iii) receipt, inspection, and acceptance of supplies or services.

(2) If circumstances preclude an individual from performing a single function, as a minimum, the individual responsible for the award of a contract or placement of an order shall not perform the receipt, inspection and acceptance function.

5203.104 Procurement integrity.

5203.104-9 Certification requirements.

- (f) Exceptions to certification requirements.

(2) Contracting officers shall submit requests for waiver to APIA-PP via the HCA.

5203.104-11 Processing violations or possible violations.

(a) (1) The CCO, without power to redesignate, is designated to review and concur or nonconcur with the contracting officer's conclusion that there is no impact on the procurement.

(b) (3) and (4) Advise APIA-PP if a criminal investigation has been initiated or a violation has occurred.

SUBPART 5203.2--CONTRACTOR GRATUITIES TO GOVERNMENT PERSONNEL

5203.203 (DFARS 203.203) Reporting suspected violations of the Gratuities clause.

SECNAVINST 5430.92A date 20 August 1987 assigns responsibilities to counteract fraud, waste, and related improprieties within the DoN.

(S-90) ASN(RD&A) may establish, as appropriate, a board to give notice of hearings, to conduct hearings and to make findings of fact and recommendations. The Board shall consist of a chairperson, an attorney, and one other member. The Secretary of the Navy will make the final decision as to what remedies the Government

may pursue in the event of an infraction of the Gratuities clause is found to have occurred.

SUBPART 5203.5--OTHER IMPROPER BUSINESS PRACTICES

5203.5-90 Fraud, waste and other improprieties.

HCA's shall: (a) comply with SECNAVINST 5430.92A dated 20 August 1987 to ensure integrity in the acquisition process;

(b) identify for special management attention those positions requiring continued, close association with the contractor or the contractor's representatives and involving duties or decisions which strongly affect the contractor's interest; and

(c) take prompt administrative steps or assist appropriate authorities in criminal or civil actions against military and civilian personnel involved in fraudulent activities. Provide necessary assistance and information in reply to inquiries concerning suspected wrong-doing or abuse of authority. Cooperate with the Federal Bureau of Investigation and the Naval Investigative Service.

SUBPART 5203.6--CONTRACTS WITH GOVERNMENT EMPLOYEES OR ORGANIZATIONS OWNED OR CONTROLLED BY THEM

5203.602 Exceptions.

The HCA is the agency head's designee, without power of redesignation, to authorize exceptions.

PART 5204

ADMINISTRATIVE MATTERS

SUBPART 5204.2--CONTRACT DISTRIBUTION

5204.201 Procedures.

Navy contracting activities located in the metropolitan Washington, D.C. area are required to deliver accounting copies of contracts and modifications to the Naval Regional Finance Center (Code 40) within two working days after execution.

SUBPART 5204.6--CONTRACT REPORTING

5204.600 (DFARS 204.600) Scope of subpart.

Contract reporting on the DD Form 350 and DD Form 1057 will be in accordance with the policies and procedures promulgated by the Deputy Commander for Contracting Management, NAVSUPSYSCOM (see NAVSUPINST 4200.86A dated 28 May 1991).

SUBPART 5204.8--CONTRACT FILES

5204.802 (DFARS 204.802) Contract files.

(2) Official record copies may include computer generated documents prepared within the contracting activity to request and support individual contracting actions. However, the automated system generating such documents shall contain internal control mechanisms and controlled access features sufficient to provide the review, approvals, checks and balances normally associated with manual systems of operation.

SUBPART 5204.70--UNIFORM PROCUREMENT INSTRUMENT IDENTIFICATION NUMBERS

5204.7003 Basic PII number.

5204.7003-1 Elements of number.

(a) (3) The capital letter "G" shall be assigned to the ninth position of the basic PII Number for Educational Service Agreements (ESAs) (see DFARS 237.72).

SUBPART 5204.90--HCA CONTRACTING WORKLOAD RECORDS

5204.9000 Policy.

HCAs shall ensure that records are maintained that include information on undefinitized changes, maximum priced orders, letter contracts, contract administration services, and general contracting workload.

PART 5205

PUBLICIZING CONTRACT ACTIONS

SUBPART 5205.3--SYNOPSES OF CONTRACT AWARDS

5205.303 (DFARS 205.303) Announcement of contract awards.

(a) Public Announcements.

(i) Letter contracts and advance acquisition contracts with a ceiling amount of \$5 million or more are to be announced at the ceiling amount at the time of issuance of the contract.

(i) (A) When a Contract Administration Office (CAO) is to issue an order or modification that requires announcement, the Navy requiring activity is responsible for the announcement.

(ii) (A) Submit announcement information (in duplicate) to the Navy Chief of Information (CHINFO).

(ii) (D) (5) Miscellaneous data.

(S-90) Include

(a) a statement that the information contained in the announcement is unclassified;

(b) any areas of possible sensitivity high level interest;

(c) indication of appropriate coordination to insure the accuracy of the wording and data to be released.

(d) Five copies of the announcement.

(S-91) Security review. Routine contract announcements are exempt from the security review process. However, full security review is required for contract announcements which are accompanied by amplifying press release.

(S-92) Format. To provide for a better understanding by the public, contracting activities shall explain in public announcements the specific type of contracting action being awarded (i.e., state that the Navy has awarded a "contract", exercised a "contract option" or negotiated a "change" to a contract). Sample formats of announcements are illustrated below. Formats may be altered to suit the circumstances of the contracting action.

(i) Contract change (Name of contractor, city, state)_____ is receiving modification number _____ to previously awarded Contract No. _____ issued by the (activity) _____. This change increases the value of the basic contract by \$_____, the new total value is \$_____. Insert one of the following as appropriate:

(A) This change adds the (# of increment, i.e., second, third, etc.) increment of the (length of multi-year contract, i.e., three, four, etc.) year multi-year basic contract.

(B) This change provides for the purchase of an additional quantity of (quantity and item, e.g., 500 widgets) being produced under the basic contract. (If

appropriate, indicate that the contracting action is the result of a competitive negotiated procurement).

(C) This change provides for the exercise of an option for an additional quantity of (quantity and item, e.g., 200 gadgets) being produced under the basic contract.

(D) This change provides for the purchase of an additional (quantity and item purchased). The contractor indicates that the work (is being) (will be) performed at (city and state).

SUBPART 5205.4--RELEASE OF INFORMATION

5205.404 Release of long-range acquisition estimates.

5205.404-1 Release Procedures.

(a) Application. The HCA is the agency head's designee for release of long-range acquisition estimates. Public release of long-range procurement estimates should be considered for all contract actions expected to exceed \$1 million in a fiscal year.

SUBPART 5205.5--PAID ADVERTISEMENTS

5205.502 (DFARS 205.502) Authority.

(a) Newspapers.

(i) Delegation of authority to approve the publication of paid advertising for civilian personnel purposes is set forth in SECNAVINST 12330.2. HCAs may delegate the authority to approve the publication of paid advertising in newspapers for all other purposes to an individual not below the level of the CCO. The HCA or designee is authorized to assign all administration duties entailed in authorizing, ordering and certifying for payment, including execution of the advertising order. Any such assignment must be in writing, made by name or position, may not be redelegated, and must set forth the extent of the administrative duties involved and authorized to be performed.

PART 5206

COMPETITION REQUIREMENTS

5206.003 Definitions.

"Procuring activity". All Navy activities with (i) a designated competition advocate and (ii) a contracting office with contracting authority in excess of \$100,000 shall be considered a "procuring activity" solely for the purpose of enabling their designated competition advocate to exercise the justification approval authority provided by FAR 6.304 (a) (2).

SUBPART 5206.2--FULL AND OPEN COMPETITION AFTER EXCLUSION OF SOURCES

5206.202 (DFARS 5206.202) Establishing or maintaining alternative sources.

(b) (1) D&Fs shall be signed as follows:

(i) For a proposed contract not exceeding \$10,000,000, the approval level is the HCA, or a designee who

(A) If a member of the armed forces, is a general of flag officer; or

(B) If a civilian, is serving in a position in grade GS 16 or above under the General Schedule (or in a comparable or higher position under another schedule).

(ii) For a proposed contract over \$10,000,000, the approval level is the NSPE.

SUBPART 5206.3--OTHER THAN FULL AND OPEN COMPETITION

5206.303 Justifications.

5206.303-1 (DFARS 206.303-1) Requirements.

(b) HCAs shall specify the review and approval levels that technical and requirements personnel must obtain before submitting a recommendation for other than full and open competition to the contracting officer.

5206.303-2 Content.

(a) Each justification also shall include:

(i) A statement of delivery requirements (e.g. include a list of ships and/or shore activities and required delivery dates for each).

(ii) The total estimated dollar value for the acquisition(s) covered by the justification. The estimated dollar value should be identified by fiscal year and appropriation.

(iii) Reference to the approved AP, when the acquisition(s) covered in the justification meet the criteria/thresholds for a written AP (see DFARS 207.103 (c)). In addition, a copy of the approved AP shall be attached to each justification requiring NSPE approval at the time the justification is submitted to APIA-PP by the contracting activity. If the cost information contained in the approved AP is not current and complete at the time the approval, then a revised cost information sheet shall be provided concurrent with, but not contained in, the justification. If the other information contained in the approved AP is not current and complete at the time the justification is submitted for approval, AP revisions shall be provided in accordance with 5207.104 (a).

(iv) In the case of spare and repair parts acquisitions, documentation that specifications was conducted to ensure that the specifications reflect the minimum requirements.

5206-303-90 Format.

(a) Justifications shall be prepared in letter format on contracting activity or contracting office letterhead. Information required shall be in the sequence set forth in 6.303-2 of the FAR/NAPS. All items shall be included in their proper sequence. Those determined to be not applicable should cite a "N/A" along with brief supporting rationale unless the reason for nonapplicability is self-evident. Certification and approval signatures shall be provided at the end of the text as set forth below (no other certification/approval signatures are required). However, the technical and requirements certification need not be included in the justification when the justification contains a statement that any technical or requirements supporting data used to form a basis for the justification has been certified as complete and accurate by cognizant technical/requirements personnel.

(b) TECHNICAL AND REQUIREMENTS CERTIFICATIONS (see FAR 6.303-2(b)):

I certify that the facts and representations under my cognizance which are included in this justification and its supporting Acquisition Plan No. _____ and which form a basis for this justification are complete and accurate.

Technical Cognizance
(Signature) _____

Name and Title	Code	Phone	Date
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Requirements Cognizance:
(Signature) _____

Name and Title	Code	Phone	Date
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(c) CONTRACTING OFFICER CERTIFICATION (see FAR 6.303-2(a) (12)):

I certify that this justification, including its supporting Acquisition Plan No. _____, is accurate and complete to the best of my knowledge and belief.

(Signature) _____

Name and Title	Code	Phone	Date
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(d) APPROVAL BLOCK (see FAR 6.304 and DFARS 206.304 for Approving Official):

APPROVED: _____
Name and Title Date

5206.303-92 Review.

(a) Each justification shall be reviewed by counsel for legal sufficiency prior to its submission for approval. The counsel for the contracting activity preparing the justification is responsible for the review. HCAs shall establish review procedures for field purchasing activities without assigned counsel.

(b) Each justification requiring approval by the NSPE shall be forwarded as an enclosure to a brief transmittal letter prepared on the contracting activity/contracting office letterhead (an original and 5 copies shall be submitted). The transmittal letter shall be addressed to APIA-PP and shall be signed by the HCA. The HCA may delegate this signature authority (without power of redelegation) to an individual not below the level of the Deputy/Assistant Commander for Contracts.

5206.304 Approval of the justification.

(c) (1) Class justifications shall be approved in the same manner as individual justifications with the same approval threshold. The cumulative dollar value of all actions contemplated under the class justification will be used to determine the approval authority for the class justification.

(2) The following are examples, not intended to be all inclusive, of appropriate class justifications:

(i) A basic ordering agreement (BOA) including all orders to be issued thereunder for the term of the BOA (e.g., spare parts);

(ii) Two consecutive fiscal years' production requirements for a weapon system including procurement of long lead time items for future years of production. Navy policy is to limit the period of these class justifications to no more than two years' requirements for deliverable end items, except for authorized multiyear procurements (there is no prescribed time limit for long lead time items); or

(iii) Contracts to be awarded to more than one contractor to provide GFE for assembly into an end item, such as a missile. In such cases the circumstances of the class justification must justify all contracts proposed thereunder.

(3) A duplicate original copy showing approval signature shall be made a part of the file of each acquisition covered by the class justification.

(4) Where the dollar value of the proposed contract, at the time of contract award, exceeds the dollar threshold of the original approval authority, new justification approval must be obtained from the appropriate approval authority.

PART 5207

ACQUISITION PLANNING

SUBPART 5207.1--ACQUISITION PLANS

5207.103 (DFARS 207.103) Agency-head responsibilities.

(c) (i) Written acquisition plans (APs) shall be prepared by DoN contracting activities for all acquisitions involving the development, production, or support of weapon systems, subsystems, or equipments which meet or exceed the threshold of DFARS 207.103(c) (i) unless otherwise exempt. APs shall be prepared in accordance with the OASN (S&L) Acquisition Planning Guide dated 1 November 1988. A new ASN(RD&A) guide is expected to be available by March 1992.

(d) Examples of program based APs include, but are not limited to, aircraft; helicopters; drones and targets; missiles; launchers; tracked and wheeled vehicles; guided munitions; bombs; guns; mines; torpedoes; radars; surveillance, command, control and communication; electronic warfare; propulsion; radio/navigation; astronautics and spacecraft; telemetry; photographic and meteorological equipments; tactical computers and associated software; FIP resources; and rescue, safety and survival equipments.

(i) APs shall be prepared for the acquisition or conversion of naval vessels, small vessels and crafts (including MSC vessels/craft); depot level repair or modification of aircraft; ship chartering; and ocean shipping. Support equipment (e.g., ground support equipment), stowage and handling equipment, and training devices also require written APs; but, if appropriate, individual acquisitions may be included in a program AP (see DFARS 207.103 (d)). Contractor support services (e.g., engineering and technical services; management and professional support services; base operating services; etc.) also require written APs. In addition, APs are required for all other services acquisitions in support of development/production of systems, subsystems, and equipment, or which provide assistance to a functional organization which supports multiple systems or programs. Planning for these services may be included in a program AP. Written APs are also required prior to any substantive internal Government effort that would preclude contractor support or other procurement strategies (e.g., internal Navy ship preliminary design and/or contract design).

(ii) APs are not required for the following: military construction; commercial items sold in substantial quantities to the general public; spare and repair parts; items of supply which are managed on a national basis where requirements are computed in accordance with established DoD/ DoN inventory management policy/regulation; overhaul and/or modification of naval vessels, small vessels and crafts (including MSC vessels/crafts); overhaul and/or modification of engines; operation and maintenance of weapon test/training ranges; ocean towage; Commercial Activities; architect-engineer; major station maintenance and repair; and component overhaul/maintenance/repair at the depot, intermediate or organizational levels.

(g) (i) Acquisition Plans shall be approved by cognizant Program Executive Officers (PEOs), Direct Reporting Program Managers (DRPMs) or HCAs, or their designees.

(g) (ii) For all Acquisition Category (ACAT) programs, an Acquisition Strategy Report (ASR) must be approved by the Milestone Decision Authority (MDA) in advance of any AP approval. DoD Instruction 5000.2 dated 23 February 1991 (Part 11, Section D) states that the AP "... may not be approved until the Acquisition Strategy Report has

been approved by the milestone decision authority." In addition, the AP must incorporate the approved acquisition strategy.

(g) (iii) APs must be approved prior to the commencement of substantive Government internal effort that would preclude contractor support or other procurement strategies. For example, the decision to conduct ship preliminary design and/or contract design internally is a strategy that must be endorsed not just prior to the ultimate procurement, but rather as a part of the AP prior to commencement of this internal Navy work.

(g) (iv) APs shall be signed by the cognizant PEO/DRPM/HCA or designee, the program manager, the CCO and the contracting officer. However, for APs prepared by a NAVSUPSYSCOM field contracting activity, the program manager from the activity in which the requirement originated shall provide the program manager signature and the Commander, NAVSUPSYSCOM or designee shall provide the HCA signature.

5207.104 General procedures.

(a) AP revisions should coincide with major program events (e.g., Defense Acquisition Boards (DABs), Acquisition Review Boards (ARBs), Navy/Marine Corps Program Decision Meetings (N/MCPDMs) etc.) and the transition from one phase to another (e.g., engineering and manufacturing development to production and deployment). Dependent upon the extent of the revisions, AP revisions may be submitted in either memorandum format, as change pages to the initial AP, or as a completely revised AP. Discuss only those program matters that have changed. If the change pages are used, the revised pages should be dated on top and the changed passages should normally be marked with a vertical line in the right-hand margin. If the AP revision is a major revision due to significant program changes, it requires the same formal review as the initial AP. For less than major revisions, review should be confined to activities responsible for the particular functional area(s) being changes.

PART 5208

REQUIRED SOURCES OF SUPPLIES AND SERVICES

SUBPART 5208.8--ACQUISITION OF PRINTING AND RELATED SUPPLIES

5208.801 Definitions.

"Duplicating" includes and applies to the limited production of end items by use of certain types of equipment as cited on DoN publications and Printing Service directives. No more than 5,000 8 1/2 x 11 inch production units may be duplicated of any one page (one side of one sheet). Duplicating of end items consisting of two or more pages may not exceed 25,000 8 1/2 x 11 inch production units in the aggregate. The content, editorial and physical format, and distribution of duplicated items shall be in accordance with public law and regulations governing printed items.

"Publications" include, but are not limited to, end items of printing as defined herein, and any book, pamphlet, directive, form, manual, folder, brochure, periodical magazine, newspaper, microcard or other microform, technical report, chart, poster, map, drawing, tag, placard or blankbook, printed by or for the DoN, regardless of content, format quantity, distribution, or intended end use. (Exception: Publications produced by suppliers and regularly carried as stock items for commercial sale or use are not included in this definition).

5208.802 Policy.

(a) Publications and printing may not be procured as an integral part of a DoN contract or grant unless authorized by the Congressional Joint Committee on printing or unless a waiver has been obtained from the Public Printer (Government Printing Office).

(b) Responsibility for initial determination on the necessity for authorizations or waivers, and for dealing with the Congressional Joint Committee on Printing and the Public Printer on matters relating to publications and printing, is vested in the Director, Navy Publications and Printing Service.

SUBPART 5208.70 (DFARS 208.70) --COORDINATED ACQUISITIONS

5208.7002 (DFARS 208.7002) Assignment authority.

(a) Responsibilities under coordinated acquisition.

When the DoN has received a contracting assignment under the DOD Commodity Assignment Program, the Commander, NAVSUPSYSCOM will assign contracting responsibilities to a particular contracting activity.

SUBPART 5208.90--SERVICES OF SHIPS AND CRAFT

5208.9000 Services of ships and craft for other than transportation.

MSC shall purchase or otherwise provide for DoN activities, as requested, the services of ocean-going ships and craft (excluding harbor craft) for purposes other than transportation such as oceanographic research and survey including underwater research; cable laying; repair facilities; and range instrumentation. Requirements for such services or ships, except those met by ships and craft organic to the Military Services and those required in the installation phase of a system by the systems contractor, shall be placed upon MSC in a timely manner to permit maximum competition.

5208.9001 Charter or Sublet of Government Owned Research Ships.

The Chief of Naval Research is responsible for DoN charter party agreements wherein DoN owned oceanographic research ships are leased to research institutions for the performance of contract research.

SUBPART 5208.91--AUTOMOTIVE, CONSTRUCTION, AND MATERIALS HANDLING EQUIPMENT

5208.9100 Scope.

This Subpart assigns responsibilities and establishes basic policies pertaining to all phases of automotive transportation and all types of automotive, construction, and materials handling equipment. It does not cover automotive, construction, and materials handling equipment in war reserve stocks intended for use at advanced bases or in training exercises.

5208.9101 Definitions.

Automotive vehicles includes trailers and all self-propelled motor vehicles designed for highway or cross-country operations. Specifically included are buses, sedans, trucks, carryalls, station wagons, ambulances, refuelers, defuelers, truck trailers, and structural firefighting and aircraft firefighting and rescue operation trucks.

Construction and weight handling equipment includes all mobile or transportable mechanical equipment used in the construction, alteration, and maintenance of buildings, roads, or other real property. Included are mobile power shovels, mobile cranes, road rollers, crawler tractors, earthmoving scrapers, snowplows, compressors, generators, street and runway sweepers, and industrial tractors. Gantry/portal cranes, overhead traveling electric cranes, and floating (YD) cranes are excluded.

Materials handling equipment includes all self-propelled and conveyor equipment normally used in storage and materials handling operations in and around warehouses, shipyards, industrial plants, airfields, magazines, depots, docks, terminals and on board ships. Included are warehouse tractors, forklift trucks, rough terrain forklift trucks, platform trucks, straddle carrying trucks, industrial cranes, and automated material handling systems including, but not limited to, gravity and powered conveyors, storage retrieval machines, manual or guided-wire stock selector vehicles and electronically guided warehouse tractors. Also included are driverless tractor systems, stock selector systems, storage retriever systems, stacker crane systems, pallet movement systems, and intra-depot transporter systems for warehouse applications. Construction and gantry/portal cranes, overhead cranes, and nonportable shipboard conveyor systems are excluded.

Specialized equipment includes equipments defined as special purpose items procured for predominate use to support a specific equipment, ship, weapon system, or mission under the management control of a specific bureau or command and where the design, operation, utilization, or logistics support must be closely integrated with the equipment, ship weapon system, or mission it supports.

5208.9102 Responsibilities.

(a) The Marine Corps shall provide funds for the procurement, and administer the assignment, utilization, and maintenance, of all equipment covered by this subpart which the Marine Corps may require, except for procurement of ambulances. Procurement of Civil Engineer Support Equipment (CESE) and Materials Handling Equipment at Marine Corps Air Stations is the responsibility of the Marine Corps. All other equipment, except equipment peculiar to the Marine Corps, is the responsibility of the Navy.

(b) NAVFACENCOM has the following responsibilities for the DoN with respect to automotive vehicles, construction equipment, and standardized automotive components of specialized types (where specifically indicated, these responsibilities apply also to automotive vehicles and construction equipment used by the Marine Corps):

(1) Providing funds for the procurement, and administering the assignment and utilization, of all passenger carrying vehicles in accordance with the military requirements established by CNO;

(2) Establishing and promulgating standards for operation and general utilization;

(3) Preparing and promulgating maintenance standards;

(4) Administering public laws relating to:

(i) Commercial type and school bus operations (including Marine Corps);

(ii) Official use of Government-owned and operated motor vehicles including passenger cars (applies to Marine Corps for field status determinations only); and

(iii) The sale and replacement of used automotive vehicles, construction equipment and specialized types.

(5) Maintaining current and complete files and records for all activities, ashore and afloat;

(6) Assigning registration numbers;

(7) Establishing criteria for replacement and retirement;

(8) Developing and promulgating specifications;

(9) Acting upon procurement requests including those of the Marine Corps, transmitting them to the contracting activity designated by higher authority;

(10) Establishing standards for qualifications, training, and indoctrination of professional, technical, and supervisory employees concerned with automotive vehicles and construction equipment;

(11) Coordinating requirements and effecting standardization of equipment as practicable;

(12) Through command channels verifying, determining degree of, and assisting in compliance with the technical standards and safety regulations;

(13) Acting as a central clearing agency for the Navy, less the Marine Corps, in exchanging and disposing of automotive and construction equipment; and

(14) Devising standardized cost accounting and reporting requirements in collaboration with the Office of the Comptroller and other interested systems commands and offices.

(c) NAVSUPSYSCOM has the responsibilities listed under subparagraphs (b) (2), (b) (3), (b) (4) (iii), (b) (5), (b) (6), (b) (7), (b) (8), (b) (10), (b) (11), (b) (13), and (b) (14) with respect to materials handling equipment.

(d) The Bureau of Medicine and Surgery has the responsibilities listed below with respect to other specialized types of automotive equipment developed for its specific use at all DoN activities. Specialized types of automotive equipment under

cognizance of the Bureau of Medicine and Surgery include mobile X-ray units, mobile dental units and mobile surgical operating units. The responsibility for these specialized types which are developed for advance base components or combat units will be vested in the Systems Command or Office having responsibility therefor.

(1) Providing funds for the procurement, and administering the assignment and utilization, of all such equipment;

(2) Determining allowance lists and requirements for current and future needs;

(3) Determining what equipment is excess to its needs; and

(4) Establishing maintenance and operating procedures for medical and dental equipment contained in specialized types.

(e) NAVSEASYSKOM has the responsibility, in collaboration with each cognizant Systems Command and Office of the DoN, for recommending to the CNO allowances, and changes therein, of materials handling equipment for all types of vessels. Such allowances and changes become effective upon approval by CNO.

(f) Each Systems Command, Bureau and Office of the DoN has the responsibilities listed below with respect to specialized equipment for activities under its management control except as indicated in (b), (c), (d), and (e) immediately above.

(1) Providing funds for the procurement, and administering the assignment and utilization, of all specialized equipment;

(2) Providing funds for maintenance and operation;

(3) Determining requirements for current and future needs;

(4) Establishing allowance lists for all its activities in accordance with the military requirements established by the CNO;

(5) Determining what equipment is excess to its needs;

(6) Developing and promulgating specifications for specialized types and the specialized components of specialized types; and

(7) Establishing operating and utilization procedures for specialized types and maintenance procedures for the specialized components of specialized types.

(g) Offices, Bureaus and Commands have coordination control of automotive transportation matters within their respective commands. These commands, subject to the technical guidance of NAVFACENGCOM, are also responsible for coordinating all phases of the DoN's automotive and construction equipment program, between the activities within their commands and the bureaus and offices of the DoN; for inspecting shore activities and reporting appropriate recommendations to the respective management bureaus, for transferring of excess equipment; and for effecting standardization of equipment, as practicable, within their own commands.

(h) ASN(RD&A) has general direction and supervision of policies, procedures and standards in the field of automotive transportation.

PART 5209

CONTRACTOR QUALIFICATIONS

SUBPART 5209.1--RESPONSIBLE PROSPECTIVE CONTRACTORS

5209.103 (DFARS 209.103) Policy.

(a)(i)(C) Submit requests for USD(A) approval via APIA-PP.

5209.104 Standards.

5209.104-3 Application of standards.

(c) The adequacy of a contractor's past performance will be a major factor in determining responsibility. When little or no contractor performance data is available within the contracting office, request the cognizant contract administration office (CAO) to assess the prospective contractor's ability to meet contract requirements and request a pre-award survey encompassing an evaluation of the adequacy of the contractor's quality control system. Incorporate the CAO assessment and pre-award survey in the contract award file.

5209.105 Procedures.

5209.105-1 Obtaining information.

(a) Contracting offices shall (to the extent practicable) maintain contractor performance data for use in making determinations of responsibility. Additionally, NAVSEASYS COM (code 5124) is the designated focal point for maintaining contractor's past performance for designated commodities. For details contact: Navy Material Quality Assessment Office, Federal Building, 80 Daniel Street, Portsmouth, NH 03810.

(c) Performance data may include:

(i) Acquisition history. Records of previous contract performance, outstanding claims, termination for default, etc.

(ii) Contractor plant visits. Results of recent pre-award surveys and post-award orientations and status of corrective actions.

(iii) Product deficiency reporting and feedback. Responsiveness to SF-364, Report of Item Discrepancy, and SF-368, Quality Deficiency Report, and the validation of corrective actions.

(iv) Waiver/deviation requests. Frequency and repetitiveness.

(v) First article inspection/test and production lot testing.. Results of and criticality of defects.

(vi) Special quality data. Government Industry Data Exchange Program Alerts; component bulletins; CAO method D & C corrective actions; and reports from other DOD components.

(vii) Technical receipt inspection results. Rejection rates based on inspection of products prior to acceptance by government.

SUBPART 5209.2--QUALIFICATIONS REQUIREMENTS

5209.202 Policy.

(a) (1) The HCA is the agency head's designee to prepare the written justification.

SUBPART 5209.4--DEBARMENT, SUSPENSION AND INELIGIBILITY

5209.401 Applicability.

This subpart applies to all DoN appropriated fund contracting activities.

5209.402 Policy.

(d) The General Counsel of the Navy has assigned Counsel (PIO) the responsibility for (i) processing and recommending debarment or suspension action to the debarring and suspending official; and (ii) establishing a Procurement Integrity Office.

5209.404 Parties Excluded from Procurement Programs.

(c) (1) (2) and (3) Counsel, Procurement Integrity Office (Counsel (PIO)) will provide the required notification.

(c) (4) Records including the debarment and suspension reports required by FAR 9.406-3 and 9.407-3, respectively, will be retained by the Counsel (PIO).

(c) (5) Counsel (PIO) is responsible for distribution of the list to all DoN activities. All requests for additions, deletions or changes (including quantity changes) for distribution addresses should be forwarded to the Counsel (PIO), Office of the General Counsel, Legal Services Support Group, Department of the Navy, Washington, D.C. 20360-5110.

(c) (6) Inquiries should be directed to the Counsel (PIO) at the above address.

5209.405 Effect of listing.

(a) ASN (RD&A) will provide the written statement of the compelling reasons. Submit requests for approval to APIA-PP with complete justification for the proposed consent action.

5209.405-2 Restrictions on subcontracting.

(b) Immediately upon receipt, the contracting officer shall provide APIA-PP, an informational copy of the written notification received from the contractor.

5209.406 Debarment.

5209.406-3 (DFARS 209.406-3) Procedures.

(a) Investigation and referral.

(i) Contracting officer reports shall be promptly initiated, coordinated with counsel, and submitted for signature by the HCA or designee. Forward reports to Counsel (PIO). In cases involving convictions, forward reports within fifteen

calendar days after the judgment order is filed. In cases involving indictments, forward reports within fifteen calendar days after the indictment is filed.

(ii) Reports shall include the following information:

(G) The summary shall include comments regarding the U.S. Attorney's position on release of any investigative reports included in the report.

(J) (4) Signed and dated copies of indictments, judgments, plea agreements, or search warrants, in advance of certified copies of such documents, if certified copies are not readily available.

(S-90) Copies of DD350 reports for the previous two fiscal years.

(S-91) A copy of a current Dun and Bradstreet report on the contractor and any subsidiaries or divisions, along with a recommendation for debarment or suspension action in the case of each subsidiary division and the officers thereof.

(S-92) Current mailing addresses of individuals involved in the case, along with a recommendation for debarment or suspension action for each individual.

(S-93) If Government employees are involved in the wrongdoing, the names and current addresses of the employees, disciplinary action taken and the current employment status of each individual. If no disciplinary action was taken against Government employees involved in the wrongdoing, and the contractor or contractor personnel are recommended for debarment or suspension, a statement explaining why no disciplinary action was taken, and why debarment or suspension is appropriate under the circumstances.

5209.407 Suspension.

5209.407-3 Procedures.

(a) Investigation and referral. Prepare and process reports in accordance with 5209.406-3.

SUBPART 5209.5--ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTEREST

5209.503 Waiver.

The HCA, without power of delegation, may make the determinations required by FAR 9.503.

PART 5211
ACQUISITION AND DISTRIBUTION OF COMMERCIAL PRODUCTS

**SUBPART 5211.70 (DFARS 211.70)--CONTRACTING
FOR COMMERCIAL ITEMS**

5211.7003 Applicability.

5211.7003-2

- (a) HCAs may make the determination.

PART 5213
**SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE
PROCEDURES**

SUBPART 5213.1--GENERAL

5213.103 Policy.

Pursuant to 5201.690-1(c), NAVSUPSYSCOM has responsibility for providing DoN wide policy for small purchase as defined in FAR Part 13. Specific policy, procedures and guidance concerning small purchase and other simplified purchase procedures will be promulgated by the Deputy Commander for Contract Management, NAVSUPSYCOM.

PART 5214

SEALED BIDDING

SUBPART 5214.2--SOLICITATION OF BIDS

5214.202 General rules for solicitation of bids.

5214.202-90 Consolidated bid room facilities.

(a) Under the direction of the NAVSUPSYSCOM, a common bid room shall be established and operated by the Naval Regional Contracting Center (NRCC), Washington, for all sealed bidding acquisitions of the Systems Command Headquarters. Bid rooms will not be operated by Systems Commands, except that NAVFACENGCOM may operate a separate bid room for sealed bidding construction contracts.

(2) NRCC, Washington shall:

(i) Issue invitations for bids (IFBs), complete with applicable specifications, drawings and other descriptive data (unless the required specifications, drawings, or descriptive data is to be mailed directly from the Systems Command to the bidders included on the mailing list for the invitation for bids);

(ii) Receive, open and abstract bids; make any determination concerning late bids; annotate retained Abstract of Bids to show award of contract(s) or other disposition;

(iii) Supplement the list of bidders supplied by the Systems Command as appropriate; and

(iv) Furnish, or arrange to have furnished, upon request from prospective bidders, bid forms and applicable specifications, drawings, and descriptive data.

(3) Systems Command shall:

(i) Prepare invitations for bids (IFBs) (including assignment of the Systems Command Procurement Instrument Identification Number and opening date) and submit in a form ready for reproduction;

(ii) Furnish NRCC Washington a list of bidders to be solicited and address labels;

(iii) Provide in a mailable condition sufficient copies of applicable specifications, drawings, and other descriptive data required for distribution to the initial list of bidders plus copies to satisfy expected additional requests. If desired, specifications, drawings, and descriptive data may be mailed directly by the Systems Commands concurrently with the issuance of the invitation for bid;

(iv) Synopsise proposed contract and award;

(v) Prepare and furnish to NRCC Washington in a form ready for reproduction any required modification to an invitation for bid;

(vi) Evaluate bids, make affirmative determinations of responsibility, and award contracts; and

(vii) Advise Naval Regional Contracting Center Washington of awards made (or other actions if no award is made under an IFB).

SUBPART 5214.4--OPENING OF BIDS AND AWARD OF CONTRACT***5214.401 Receipt and safeguarding of bids.***

(a) Each contracting office receiving bids shall have procedures for the identification and prompt forwarding of unopened bids for deposit in the bid box. Upon receipt, bid envelopes received by mail shall be time-stamped and checked for identification prior to deposit in the bid box. Hand-carried bids shall not be accepted by government employees, but must be deposited in the bid box by the bidder or his representative. Insofar as possible, bid samples will receive the same degree of security as is afforded bids, and will be accounted for by the maintenance of local records. Under no circumstances will bid samples be given away, loaned, diverted, or used for any purpose other than that intended.

5214.406 Mistakes in bids.

5214.406-3 (DFARS 214.406-3) Other mistakes disclosed before award.

(e)(i) Authority for making a determination under FAR 14.406-3(a), (b) and (d) is delegated, without power of redelegation, as follows:

(i) Deputy Commander for Contracts, NAVFACENGCOM, when arising under invitation for bids for construction, maintenance, or repair of public works; and

(ii) Deputy Commander for Contracting Management, NAVSUPSYSCOM when arising under invitations for bids for supplies or services.

PART 5215

CONTRACTING BY NEGOTIATION

SUBPART 5215.4--SOLICITATION AND RECEIPT OF PROPOSALS AND QUOTATIONS

5215.407 Solicitation provisions.

(S-90) If it is anticipated that an award will be based on adequate price competition, the solicitation shall include the provision at 5252.215-9000. If the procurement schedule is critical, this provision with its Alternate I shall be used so that there will be a minimum delay in the event that adequate price competition does not materialize and it is necessary to obtain cost or pricing data. Contracting officers must be judicious in the use of the Alternate I provision, as it may cause offerors to incur certain costs in preparing standby cost or pricing data in anticipation that it may be subsequently requested.

5215.411 Receipt of proposals and quotations.

(b) Each contracting office shall establish procedures to ensure compliance with FAR 15.411(b) and 15.413. Where facilities permit, competitive proposals and quotations should be held in a central locked storage for the purpose of identification until after the established date for their receipt.

SUBPART 5215.6--SOURCE SELECTION

5215.601 Definitions.

"Best Value", as used in this subpart, means the evaluation of proposals and selection of a source based on cost/price, and other evaluation factors such as technical competence, proven past performance, management capability, life cycle costs, and quality.

5215.604 Responsibilities.

(c) The USD(A) intends to review selected major defense acquisition programs prior to their release or execution. In order to facilitate this USD(A) review, the contracting officer shall notify APIA at least 35 days in advance of his or her intention to issue a solicitation, announce the selected, offeror selected, or award a contract for the demonstration/validation, engineering and manufacturing development, or initial production phases of a major defense acquisition program (Acquisition Category (ACAT) ID or IC). Contracting officers shall not release the solicitation, announce the winner of a contract, or make an award until the completion of the USD(A) review.

5215.605 Evaluation factors.

(c) Best value evaluations should be employed whenever possible and especially in weapons system, federal information processing (FIP), and professional and technical services support acquisitions. Requirements which dictate complex integration of people, equipment, hardware, innovation and software should also be evaluated on a best value basis. However, when noncomplex, routine requirements are being procured

and the product to be delivered is clearly defined at the outset of the procurement, it may be appropriate to award to the lowest priced, technically acceptable offeror.

(e) When a cost realism evaluation will be performed, Section M, Evaluation Factors for Award, shall include a notice that the proposed costs may be adjusted, for purposes of evaluation, based upon the results of the cost realism evaluation.

5215.608 Proposal evaluation.

(a) (1) Cost or price evaluation. When a numerical scoring scheme is used, cost or price shall not be scored unless such scoring is approved in advance by either the SSA in a formal source selection or the CCO in other evaluations. When a cost realism analysis will be performed, the resulting realistic cost estimate shall be used in the evaluation of cost.

5215.610 Written or oral discussions.

(a) (4) Acceptance of the most favorable initial proposal without discussions is encouraged.

5215.611 (DFARS 215.611) Best and final offers.

(c) (iii) (C) The HCA shall provide the required summary reports to the NSPE on a semi-annual basis. The reports shall cover the six month periods ending 31 March, and 30 September and shall be submitted to the NSPE via APIA-PP within 15 calendar days after the end of the reporting period.

5215.612 Formal source selection.

(a) General. A source selection process within the DoN is considered formal when it follows the policy and procedures on SECNAVINST 4200.33 dated 14 July 1986.

SUBPART 5215.8--PRICE NEGOTIATION

5215.804 Cost or pricing data.

5215.804-3 (DFARS 215.804-3)

Exemptions from or waiver of submission of certified cost or pricing data.

(i) Waiver for exceptional cases.

(S-90) Requests for waivers of submission of cost or pricing data and certification thereof, for other than a foreign government or agency, must describe specific action being taken to locate an alternate source or additional sources for future requirements.

(S-91) The refusal to submit (or certify) cost or pricing data must be endorsed in writing by a senior level executive officer of the prime.

(S-92) If subcontractor data are involved in the request for waiver the refusal to submit (or certify) data must be in writing signed by a senior level executive officer of the subcontractor. The prime must describe what action he has taken and is taking to obtain the requirement from alternate sources. The refusal must also be endorsed by a senior level executive officer of the prime.

(S-93) When a waiver is required, it must be approved prior to contract execution. All waiver requests must have an endorsement from each echelon of command explaining what was done to attempt to enforce compliance with Public Law 87-653.

5215.804-6 Procedural requirements.

(e) When the contracting officer is required to refer the prospective contract to higher authority, it will be referred to the HCA concerned. If the problem cannot be resolved by the HCA, the HCA will refer the matter together with comments and recommendations to APIA-PP. Award of the contract shall be suspended until the matter is resolved. This procedure shall also be followed in cases in which a prime contractor is obligated to furnish cost data relating to negotiated purchases from a subcontractor, and the subcontractor refuses to give access to cost data sufficient to permit price negotiations.

5215.804-7 Defective cost or pricing data.

(b)(4) Contractor income tax payments shall not be considered nor included in pricing adjustments for defective pricing. If the question arises, contractors should be advised to obtain such tax adjustment through the amended income tax return procedure.

5215.805 Proposal analysis.

5215.805-1 General.

(a) Contractor personnel normally shall not be members of any evaluation council, board or panel. In those specific instances where the Government does not have the requisite expertise available among its own employees, contractor personnel may be utilized in an advisory capacity only. Advisory contractor personnel shall not rank or recommend one proposal over another, assign any numerical scores or otherwise act in a decision making capacity. Whenever advisory contractor personnel are to be used, a written release shall be obtained from each offeror. The use of advisory contractor personnel must be approved by the contracting officer in advance of their participation.

5215.805-5 Field pricing support.

(a)(1) Defense Contract Audit Manual (DCAAM 7640.1), also referred to as "CAM," includes the policies, procedures, standards and techniques governing Defense Contract Audit Agency personnel in the execution of the contract audit mission. This manual and revisions are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

5215.805-70 (DFARS 215.805-70) Cost realism analysis.

(S-90) Cost realism analysis involves a summary level review of the cost portion (excluding profit/fee) of the offerors' proposals to determine if the overall costs proposed are realistic for the work to be performed. Cost realism analysis differs from the detailed cost analysis usually undertaken in a noncompetitive procurement to determine the reasonableness of the various cost elements and profit/fee to arrive at a fair and reasonable price.

(S-91) The purpose of cost realism analysis is to:

- (1) Verify the offeror's understanding of the requirements;
- (2) Assess the degree to which the cost/price proposal reflects the approaches and/or risk assessments made in the technical proposal as well as the risk that the offeror will provide the supplies or services for the offered prices/costs; and
- (3) Assess the degree to which the cost included in the cost/price proposal accurately represents the work effort included in the technical proposal.

(S-93) Some examples of data and information that may be obtained to perform cost realism evaluation are manloading (quantity and mix of labor hours); engineering, labor and overhead rates; and make or buy plans.

(S-94) A price analysis approach where there is adequate price history may also be a suitable and efficient means to evaluate cost realism. The amount of data required will be dependent upon the complexity of the procurement and the data already obtained by the contracting officer (e.g. information on recent Forward Price Rate Agreements (FPRAs)).

(S-95) Cost realism analysis generally will be performed as part of the proposal evaluation process for all competitive solicitations where a cost reimbursement contract is contemplated. For competitive solicitations contemplating a fixed price, labor hour, or time and material type contract, a cost realism analysis would be the exception and not the rule, although its use may be appropriate where the proposal evaluation process will encompass both a cost/price evaluation and technical evaluation. Also, where the contracting officer suspects a "buy-in" (see FAR 3.501) or a misunderstanding of the requirements as a result of reviewing the initial offers, data and information should be obtained and a cost realism analysis performed.

(S-96) When cost realism data are required, the contracting officer shall not request a formal field pricing report but rather, shall request a review of only those specific areas of information necessary to allow the contracting officer to perform a cost realism analysis. For example, the contracting officer may only need to know the current or FPRA labor and/or overhead rates. In these instances, the request for information from DCAA may be oral or written.

5215.806 Subcontract pricing considerations.

(S-90)(1) Purchased materials means raw materials, purchased parts, components, or end item(s) to be delivered under a contract, which are not fabricated or produced by the contractor.

(2) The need for requiring timely submission by potential and existing contractors of information required by negotiators or other contracting personnel to evaluate properly the purchased materials portion of price quotations is emphasized. This information is necessary particularly when competition is lacking or is inadequate to control the prices initially proposed. The prime categories requiring treatment are new contracts in cases involving a sole source or where competition is limited; repricing of redeterminable and incentive contracts; and equitable adjustments under the Changes clause and other clauses having similar provisions for such adjustments.

(3) Whenever it is considered desirable to make use of cost analysis techniques and the circumstances set forth in (2) above apply, solicitations shall require the offeror to include the following information in its proposal/quotation with respect to major purchased materials, and, to the extent applicable, purchased services, giving due consideration to both the relative importance of the item and the dollar amount involved:

- (i) Principal materials or components to be purchased;
 - (ii) Proposed or established sources, including size classification (large or small business) of each source;
 - (iii) Proposed method of purchase (whether competitive or other than competitive) and reasons therefor;
 - (iv) Basis for award; i.e., low bidder or delivery, etc;
 - (v) Copies of suppliers' cost breakdown and any price analysis made by the contractor if noncompetitive;
 - (vi) Type of pricing arrangement;
 - (vii) Comparison with invoice prices of prior contracts, if any;
 - (viii) Organizational relationship, if any, of proposed supplier to offeror;
- and
- (ix) In the circumstance of follow-on orders, and explanation of any changes in "make-or-buy" decisions.

(4) The same type information shall be requested from contractors in connection with the information to be furnished in support of repricing actions and equitable adjustments.

(5) A brief description of the method of evaluation utilized and sufficient examples to support the conclusions reached are a required part of business clearances.

(S-91) In order to reduce profit and G&A pyramiding in the subcontract area, personnel involved in the acquisition process should assure that supplies or services are acquired by the most economical method. Profit and G&A pyramiding occurs when a prime contractor extensively subcontracts. Opportunities for the contracting officer to reduce pyramiding occur before decisions are made on such issues as: the furnishing of government or contractor equipment and materials; make-or-buy proposals; and consent to proposed contracts. For example, economic efficiencies may be gained when government furnished property (GFP) is used or when the prime provides material as GFP to the subcontractor. Contractor's make-or-buy proposals should be scrutinized to ensure that all viable alternatives have been considered and the proposed decisions result in the least overall cost to the government. Assurance should be obtained that the contractor's purchasing systems are current and approved. In cases where contractors are performing under cost reimbursement type contracts, enhanced subcontract surveillance and consent may be required to ensure that "contracting-out " decisions, to the extent practical, result in the lowest overall cost to the government.

5215.810 (DFARS 215.810) Should-cost analysis.

(b))(iii) A waiver shall be approved by the HCA or designee at a level not below a flag/general officer or a civilian in the Senior Executive Service (SES).

(e) The content of the should-cost analysis team report shall be prescribed by the team leader, and shall include an executive summary.

5215.870 (DFARS 215.870) Industrial modernization incentive program.

5215.870-3 Incentives.

(c) No direct DoN funding will be provided during Phase I and Phase II of an Industrial Modernization Incentives Program (IMIP). This does not preclude the payment of productivity savings rewards (PSRs) during Phase III.

5215.1003 Debriefing of unsuccessful offerors.

(b) Debriefing information shall include the cost realism analysis.

PART 5216

TYPES OF CONTRACTS

SUBPART 5216.3--COSTS REIMBURSEMENT CONTRACTS

5216.306 Cost-plus-fixed fee contracts.

(c) Limitations. (2) The contracting officer signs the determination and findings.

SUBPART 5216.4--INCENTIVE CONTRACTS

5216.403 Fixed-price incentive contracts.

(c) Limitations. The contracting officer executes the determination and findings.

5216.403-2 Fixed-price incentive (successive targets) contracts.

(S-90) Phased Pricing (PP). PP is a modified form of the fixed-price incentive (successive targets) contract that provides an alternate approach for pricing an initial production option in a an Engineering and Manufacturing Development (EMD) contract. PP was developed as a contracting technique that promotes the fair and equitable apportionment of risk between the Government and the contractor, and permits a smooth transition to production. In general, PP provides for establishing an initial production option in an EMD contract but delays firm pricing of the option until after the production baseline is better defined. At a specified event during development, the contractor submits a firm proposal for the initial production option. After agreement is reached on a firm target cost, the firm target profit is derived from a previously specified formula. In addition, a ceiling price is derived from the firm target price and a previously specified Point of Total Assumption (PTA) percentage.

(S-91) PP is intended to--

(1) provide a more balanced sharing of risk between the contractor and the Government;

(2) delay establishment of firm targets until designs are sufficiently complete and risks are better defined; and

(3) maintain a profit incentive to control future production costs.

(S-92) PP is currently being tested on several major systems contracts. The results of the test will be promulgated when known. Additional information pertaining to PP may be obtained from APIA-PP.

SUBPART 5216.6--TIME-AND-MATERIAL, LABOR-HOUR, AND LETTER CONTRACTS

5216.603 Letter contracts.

Letter contracts shall name the paying activity to be designated in the definitive contract as the paying office for the letter contract. A copy of the letter contract shall be furnished promptly to the paying office named therein.

SUBPART 5216.7--AGREEMENTS

5216.703 Basic ordering agreements.

(c) Limitations.

(S-90) Basic ordering agreements (BOAs) providing for the placement of orders by the CAO shall contain a provision substantially as follows:

"Each order issued hereunder shall cite the applicable circumstance or exception and where applicable, the class justification control number, unless earlier suspended or cancelled by notice from the contracting office. Orders for items not identified in the class justification or an individual justification and the basic ordering agreements are considered unauthorized."

PART 5217

SPECIAL CONTRACTING METHODS

SUBPART 5217.2--OPTIONS

5217.202 Use of options.

(c)(S-90) The contracting officer generally shall not employ options if the justification for contract award is made under the authority cited in FAR 6.302-2 unless the justification for the urgency is equally applicable to the items/services covered by the option(s). The inclusion of options in J&As based on urgency shall include documentation of the applicability of urgency to the option(s).

SUBPART 5217.74 (DFARS 5217.74) --UNDEFINITIZED CONTRACT ACTIONS

5217.7403 Policy.

5217.7403-90 Management of UCAs.

HCAs shall consider the backlog and age of UCAs as a command key indicator, for placing routine management emphasis on UCAs.

5217.7404 Limitations.

5217.7404-1 Authorization.

The contracting officer's request for approval shall specifically state whether or not a contractor's proposal has been received and if so, whether or not it is sufficient for negotiations.

5217.7404-90 Cost segregation.

Each contract shall contain a requirement to propose and segregate costs for each UCA prior to the issuance of an UCA under that contract.

PART 5219

SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS-BUSINESS CONCERNS

SUBPART 5219.2--POLICIES

5219.201 (DFARS 219.201) General policy.

(a) The DoN Small and Disadvantaged Business Utilization (SADBU) program shall be implemented in accordance with SECNAVINST 4380.8 dated 3 June 1985.

(c)(7) a small business technical advisor shall be assigned to each office where a resident SBA procurement center representative is located.

(c)(9) Exceptions to the review requirements are contracts resulting from acceptance of unsolicited proposals; orders against indefinite delivery type contracts; and orders issued under GSA/ADP Schedule contracts. Anticipated GSA/ADP schedule actions converted to an open market procurement as a result of a schedule synopsis, shall be reviewed prior to issuing the open market solicitation.

(d) SADBU specialists shall be appointed in accordance with SECNAVINST 4380.8 dated 3 June 1985. The appointing authority shall be the head of the contracting activity. SADBU specialists, in addition to performing the duties outlined in DFARS 219.201(d), shall -

(i) brief the appointing authority quarterly on implementation of the activity's SADBU program; and

(ii) conduct SADBU program training sessions to ensure that contracting and technical personnel maintain knowledge of program requirements.

(S-90) Reviews of SADBU program implementation at DON contracting activities] will normally be conducted as a segment of the Procurement Management Review (PMR) program (see 5201.692). The Director, SADBU, will establish guidelines for the SADBU PMR segment. For reviews under 5201.692-2(a)(2), the Director, SADBU, will coordinate designation of SADBU PMR team members. Associate Directors of Small Business shall be responsible for implementation of the SADBU PMR segment of their field contracting activities (see 5201.692-2(b) and (c)), including designating SADBU PMR team members and monitoring compliance with their recommendations. Team members should generally be Deputies for Small Business from other than the activity under review. The SADBU PMR segment shall be coordinated with the PMR team leader. A copy of the SADBU recommendations and the activity's response thereto, including its plan to correct any deficiencies, shall be provided to the Director, SADBU.

5219.202-1 Encouraging small business participation in acquisitions.

Contracting activities should, when practicable, conduct briefings for small and small disadvantaged business concerns, Historically Black Colleges and Universities (HCBUs) and Minority Institutions (MIs) on planned acquisitions.

SUBPART 5209.5--SET-ASIDES FOR SMALL BUSINESS

5219.505 Rejecting Small Business Administration recommendations.

(d) The justification shall be forwarded through the HCA to the Director, SADBU, and shall include copies of all correspondence between the activity and the SBA related to the appeal, together with the rationale justifying the activity's non-set-aside determination.

SUBPART 5219.7--SUBCONTRACTING WITH SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

5219.704 Subcontracting plan requirements.

(a)(1) It is the policy of the DoN that the separate percentage goals be realistic, justifiable and positive (i.e., greater than zero).

5219.705 Responsibilities of the contracting officer under the subcontracting assistance program.

5219.705-4 Reviewing the subcontracting plan.

Contracting officers, in evaluating proposed subcontracting plans that contain positive goals, should normally obtain advice and recommendations from the cognizant contract administration office (CAO). In evaluating the appropriateness of a subcontracting plan that does not contain positive goals, the contracting officer shall request the cognizant CAO to specifically review the factors used by the prime contractor to develop the zero goal, the past performance of the prime contractor on similar requirements, and the current procedures used by the prime contractor to maximize the opportunities for small and small disadvantaged businesses to participate in its subcontracting program. The contracting officer shall evaluate the findings of the CAO'S review and consider any resultant recommendations prior to approval of the subcontracting plan. The contract file will be documented to reflect the review and the contracting officer's final decision relative to an acceptable goal. If the contracting officer determines that a subcontracting plan which contains a zero goal is appropriate, the determination must be approved at a level above the contracting officer and placed in the contract file. See DFARS 219.705-4 for establishment of small disadvantaged business subcontracting plan goals.

5219.705-6 Postaward responsibilities of the contracting office.

(S-90)(a) When the prime contractor has submitted an individual subcontracting plan, which has been incorporated into the contract, and where the DoN retains administration of the contract, the contracting officer shall transmit copies of Standard Form 294, Subcontracting Report for Individual Contracts, and Standard Form 295, Summary Subcontract Report, to the contractor at the time of contract award. A letter which reads substantially as follows should be used for this purpose:

Name
Address
City, State, Zip Code
Re: Subcontracting Plan
Reports
Contract No. _____

Dear _____:

Your individual subcontracting plan, submitted pursuant to the Small Business and Small Disadvantaged Business Subcontracting Plan clause of your contract, has been approved. The clause requires you to submit periodic subcontracting reports on Standard Form 294, Subcontracting Report for Individual Contracts, and Standard Form 295, Summary Subcontract Report.

Enclosed for your information and review are copies of the reposting forms. The reverse side of each form contains definitions, general and specific instructions for completing the forms, and submittal instructions. Any additional questions concerning report preparation requirements may be addressed to (name of SADBUs specialist), telephone _____.

Sincerely,

Contracting Officer

Enclosures

(b) When the prime contractor has submitted a company-wide plan for commercial products, the contracting officer shall transmit copies of the Standard Form 295, Summary Subcontract Report, to the contractor at the time of award. A letter which reads substantially as follows should be used for this purpose:

Name
Address
City, State, Zip Code
Re: Subcontracting Plan
Reports
Contract No. _____

Dear _____:

Your company-wide plan for commercial products, submitted pursuant to the Small Business and Small Disadvantaged Business Subcontracting Plan clause of your contract, has been approved by (name, address, and telephone number of approving official). The clause also requires you to submit periodic subcontracting reports on Standard Form 295, Summary Subcontract Report.

Enclosed for your information and review is a copy of the Standard Form 295. The reverse side of the form contains definitions, general and specific instructions for completing the form, and submittal instructions. Any additional questions concerning report preparation requirements may be addressed to (name of SADBUs specialist), telephone _____.

Sincerely,

Contracting Officer

Enclosure

5219.706 Responsibilities of the cognizant administrative contracting officer.

Where the DoN has retained contract administration responsibility for major prime contractors, the cognizant SADBU specialist shall periodically visit such contractors to review implementation of the small and small disadvantaged business subcontracting programs. For contractors where the DoN does not maintain contract administration responsibility for a majority of the prime contractor's contracts, such visits should be coordinated with the SADBU specialist at other cognizant CAOs.

SUBPART 5219.8--CONTRACTING WITH THE SMALL BUSINESS ADMINISTRATION (THE 8(a) PROGRAM)

5219.803 Selecting acquisitions for the 8(a) Program.

(b)(i) Contracting officers, in evaluating SBA requests for 8(a) Program support, or independently considering other acquisition requirements that may be accomplished by 8(a) firms, should coordinate such efforts with the activity SADBU specialist and cognizant technical personnel.

(ii) Where possible, procurement activity should be suspended pending final disposition of SBA requests. If the contracting officer determines that urgent mission requirements preclude further consideration, declination responses to SBA should factually explain such determinations.

5219.804 Evaluation, offering, and acceptance.

5219.804-1 Agency evaluation.

(f) Contracting officers, when determining the extent to which a requirement should be offered in support of the 8(a) Program, shall independently review the 8(a) firm's capabilities to ensure satisfactory performance of the requirement. Such reviews, in addition to the factors in FAR 19.803(a), may take the form of a technical presentation (see DFARS 219.804-1(f)), or should be structured in a manner that affords an exchange of information between the 8(a) firm and the contracting activity that will enable the 8(a) firm an adequate opportunity to demonstrate its capability and capacity to perform the requirement. For sole source 8(a) contracts, SBA regulations preclude the use of formal technical evaluations. Contracting officers, however, may conduct informal assessments of several 8(a) firms' capabilities to perform a specific requirement. For competitive 8(a) procedures, see FAR 19.805-2.

5219.804-1-90 Agency declination.

(S-90) When a lack of capability or capacity forms the basis for declination responses to SBA, such responses should discuss factors such as the 8(a) contractor candidate's:

- (1) knowledge and understanding of the work to be performed;
- (2) experience in performing requirements of similar size and scope;
- (3) resources that are available (including contingent hires) or that must be acquired for contract performance;
- (4) ability to comply with subcontracting limitation provisions (see FAR clause 52-219-14);
- (5) ability to meet delivery schedules; and
- (6) record of performance. Contracting activities shall provide a copy of all 8(a) program declination letters to the Director, SADBU. Such copies shall be provided concurrent with submissions to SBA. Declination letters are subject to direct appeal by the SBA Administrator to the Secretary of the Navy (see FAR 19.810). Contracting officers should coordinate such declinations with the activity SADBU specialist or the CCO.

5219.804-2 Agency offering.

(b) Contracting activities shall provide a copy of 8(a) Program offering letters to the Director, SADBU concurrent with submission to SBA.

5219.804-4 Repetitive acquisitions.

(S-90) It is DoD policy that requirements currently in the 8(a) Program are to remain in the 8(a) Program if a responsible 8(a) firm is available to perform the requirement (but see FAR 19.804-4).

5219.810 SBA appeals.

Upon notification that the SBA Administrator has filed an appeal, the contracting officer shall immediately forward to the Director, SADBU, copies of all correspondence between the activity and the SBA related to the appeal, together with the rationale justifying the activity's determination.

SUBPART 5219.70--EVALUATION PREFERENCE FOR SMALL DISADVANTAGED BUSINESS (SDB) CONCERNS

5219.7001 Applicability.

(a) Use of the evaluation preference is mandatory for sealed bid procurements and for those FAR Part 15 competitive procurements where award is to be made to the lowest priced, or lowest priced, technically acceptable offeror. In either case, "lowest total cost to the Government" may be substituted for "lowest priced" when applicable. For Far Part 15 "Best Value" competitive procurements, use of the evaluation preference is discretionary.

PART 5222

APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

SUBPART 5222.1--BASIC LABOR POLICIES

5222.101 (DFARS 222.101) Labor relations.

5222.101-1 General.

- (a)(i) Submit requests for departmental approval to APIA-PP.
- (a)(ii) Immediately notify APIA-PP.
- (a)(iii) Submit requests for agency head approval to APIA-PP.
- (a)(iv) Submit questions for the labor advisor to APIA-PP, except that questions involving construction or services under NAVFACENGCOM contracts should be submitted to the contract labor relations specialist in the appropriate NAVFACENGCOM divisional office. Questions involving construction or services under NAVFACENGCOM contracts may also be referred to the headquarters contract labor relations advisor, NAVFACENGCOM (Code 023A), Alexandria, VA 22332-2300.

5222.103 Overtime.

5222.103-4 Approvals.

- (a) The CCO is the designated agency approving official.
- (S-90) If overtime premiums at Government expense have been approved or are contemplated in a particular procurement for which a business clearance is required in accordance with 5201.690, such clearance shall contain a statement of justification indicating that the necessary approval for such premiums has been obtained. If appropriate, a copy of such approval or determination obtained may be appended to the business clearance.
- (S-91) Construction contracts. When expediting a construction contract involving additional costs, NAVFACENGCOM shall be responsible for obtaining the approval required by DFARS 236.270.

5222.103-90 Exceptions.

The provisions of FAR 22.103, DFARS 222.103 and 5222.103 of this supplement are not applicable to ballistic missile programs.

SUBPART 5222.4--LABOR STANDARDS FOR CONTRACTS INVOLVING CONSTRUCTION

5222.404 Davis-Bacon Act wage determinations.

5222.404-3 (DFARS 222.404-3) Procedures for requesting wage determinations.

(b) A copy of each request shall be provided to the cognizant NAVFACENGCOM division office.

5222.406 Administration and enforcement.

5222.406-8 (DFARS 222.406-8) Investigations.

(d) For NAVFACENGCOM contracts, the contracting officers's report shall be forwarded to the headquarters contract labor relations advisor, NAVFACENGCOM (Code 023A), Alexandria, VA 22332-2300. For all other contracts, forward the report to APIA-PP.

PART 5223
ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY AND
DRUG-FREE WORKPLACE

SUBPART 5223.1--POLLUTION CONTROL AND CLEAN
AIR AND WATER

5223.104 (DFARS 223.104) Exemptions.

(c) Submit requests for exemption to APIA-PP via the HCA.

SUBPART 5223.5--DRUG-FREE WORKPLACE

5223.506 *Suspension of payments, termination of contracts, and debarment and suspension actions.*

(e) Submit requests for waiver to APIA-PP via the HCA.

PART 5225

FOREIGN ACQUISITION

SUBPART 5225.1--BUY AMERICAN ACT--SUPPLIES

5225.102 (DFARS 225.102) Policy.

(a)(3)(C)(2) Each request for a Secretarial determination shall be submitted to APIA-PP in the form of a determination and findings.

(b)(ii)(D) The HCA is the agency head's designee, without power of redesignation, to make and approve determinations for acquisitions estimated to exceed \$2 million.

5225.108 (DFARS 225.108) Excepted articles, materials, and supplies.

(b) Copies of determinations of non-availability for unlisted articles, materials, or supplies shall be submitted via APIA-PP to the DAR Council, for possible addition to the list.

SUBPART 5225.5--BUY AMERICAN ACT--CONSTRUCTION MATERIALS

5225.202 (DFARS 225.202) Policy.

(a) (1) and (2) Each request for a Secretarial determination shall be submitted to APIA-PP in the form of a determination and findings.

SUBPART 5225.3--BALANCE OF PAYMENTS PROGRAM

5225.304 Excess and near-excess foreign currencies.

(c) The agency head's designee for making the required determination is the Comptroller of the Navy (NCB-133).

SUBPART 5225.4--PURCHASES UNDER THE TRADE AGREEMENTS ACT OF 1979

5225.402 (DFARS 225.402) Policy.

(c) (ii) National interest waivers which require approval of the USD(A) DDP shall be submitted through APIA-PP in the form of a determination and findings.

5225.403 (DFARS 225.403) Exceptions.

(d) (1) (A) Requests for national security/national defense exception to the provisions of FAR Subpart 25.4 which require approval of the Director of Defense Procurement shall be submitted through APIA-PP in the form of a determination and findings.

SUBPART 5225.7--RESTRICTIONS ON CERTAIN FOREIGN PURCHASES

5225.703 (DFARS 225.703) Exceptions.

(b) Each request for Secretarial approval or determination shall be submitted to the APIA-PP.

SUBPART 5225.8--INTERNATIONAL AGREEMENTS AND COORDINATION

5225.802 (DFARS 225.802) Procedures.

(S-90) NRCC, Naples.

(1) The Naval Regional Contracting Center (NRCC), Naples, with its London Detachment (NRCC Detachment London), serves as an area and centralized buying activity for Naval activities in Europe, Africa, Iceland, and Middle East, operating forces in European waters, for all activities when purchase is effected in Europe; and such other area activities and operating forces as may be required. For practical purposes the buying responsibilities of NRCC Naples are split between NRCC Naples and its London Detachment as follows: procurements in Southern Europe, the Mediterranean, Africa and the Middle East are handled by NRCC Naples, and procurement in Northern Europe, including the United Kingdom and Iceland are handled by NRCC Detachment London.

(2) Audit support is provided by the Defense Contract Audit Agency, European Branch Office Wiesbaden, West Germany, except that audit services for United Kingdom procurements are provided by the U.K. Ministry of Defense under the US/UK reciprocal audit agreement, and audit services in the Federal Republic of Germany, France and the Netherlands are provided by the Governments of those countries under reciprocal audit arrangements. NRCC Detachment London is the focal point within Europe for liaison relative to the furnishing of audit services by the European governments.

(3) Naval activities having requirements that can be satisfied only by European sources will normally forward their requisitions to NRCC, Naples or NRCC Detachment London, in responsibility set forth above. This does not relieve such activities from complying with current Balance of Payments directives.

(4) Exceptions. The following are exceptions to paragraphs (1), (2) and (3) above:

- (i) Contracts for complete vessels or aircraft.
- (ii) Contracts for equipment requiring servicing by representatives of foreign companies.
- (iii) Contracts within an activity's authorized purchase authority when material is readily available overseas (outside CONUS).
- (iv) Contracts for aviation support items (Aviation Supply Office (ASO) only).
- (v) Other specific exceptions as may be granted by NAVSUPSYSCOM.

(5) Contracting Officers utilizing any of the above exceptions will:

(i) Ascertain the existence and application of any Government to Government agreements and, subject to the provisions of FAR 1.405 regarding conflicts with FAR provisions based on requirements of law, shall comply with such agreements.

(ii) Prior to commencement of negotiations with a United Kingdom supplier, contact the NRCC Detachment, London, England, for

(A) a determination of whether the proposed supplier holds any U.K. furnished tooling,

(B) for advice as to the procedures to assure that no rental charges payable to Her Majesty's Government will be included in prices charged, and

(C) for information relating to the elimination of research and development charges on certain British manufactured products.

5225.871 (DFARS 225.871) North Atlantic Treaty Organization (NATO) cooperative projects.

5225.871-4 Statutory waivers.

(c) Request for waiver with draft determination and findings for signature by the Deputy Secretary of Defense, shall be submitted through APIA-PP.

5225.890 International Logistics Program (ILP).

(a) Contracts and purchase orders awarded in support of requisitions for the ILP shall:

(1) Identify the requirement as a separate contract line item or subline item in accordance with DFARS 204.7103 or 204.7104, respectively. The applicable requisition number plus:

(i) The country and case identifier (MILSTRIP CC 31-32 and 48-50) for FMS (Foreign Military Sales);

(ii) The Record Control/Program/ Directive number identifier (MILSTRIP CC 46-50) shall be entered immediately under the line or subline item for GA (Grant Aid). (Navy/Marine Corps ILP requisitions are identified by the letter P or K preceding the requisition number, Army is B, Air Force is D, Defense is T MILSTRIP CC 30).

(2) Provide for the cognizant CAO to distribute to the Navy International Logistics Control Office, Philadelphia, Pennsylvania 19111-5095, a copy of any report or document which indicates any anticipated or actual delay in delivery of line or subline items for the ILP. Copies of such reports distributed to Navy International Logistics Control Officer shall include the requisition number applicable to the line or subline item involved and shall be in addition to any other distribution required by the contract or directives applicable to the CAO.

SUBPART 5225.9--ADDITIONAL FOREIGN ACQUISITION CLAUSES

5225.901 (DFARS 225.901) Omission of examination of records clause.

(c) Conditions for omission.

(1) (ii) The written report will be submitted by APIA-PP

(d) Determination and findings. determinations and findings shall be submitted to APIA-PP.

SUBPART 5225.70 (DFARS 225.70)--AUTHORIZATION ACTS
APPROPRIATIONS ACTS AND OTHER STATUTORY RESTRICTION
ON FOREIGN PURCHASES

5225.7002 (DFARS 225.7002) Restrictions on food, clothing, fabrics, and specialty metals.

5225.7002-2 (DFARS 225.7002-2) Exceptions.

(a) The HCA is the agency head's designee, with power of redesignation, to make the required determinations.

5225.7004 (DFARS 225.7004) Restriction on machine tools and powered and non-powered valves.

5225.7004-2 (DFARS 225.7004-2) Authorization Act restrictions (FY 1990-1991)

(b) Exceptions.

(2) Waiver requests are to be submitted to APIA-PP.

SUBPART 5225.73 (DFARS 225.73)--ACQUISITIONS FOR
FOREIGN MILITARY SALES

5225.7307 (DFARS 225.7307) Implementation of offset arrangements negotiated pursuant to foreign military sales agreements.

(f) Submit inquiries via APIA-PP.

PART 5227
PATENTS, DATA AND COPYRIGHTS

SUBPART 5227.70 (DFARS 227.70)--INFRINGEMENT
CLAIMS, LICENSES, AND ASSIGNMENTS

5227.7013 (DFARS 227.7013) Recordation.

The requirement of DFARS 227.7013 is performed in the DoN by the Chief of Naval Research. Contracting activities shall forward originals of licenses, assignments or other documents evidencing an interest of the Government in patents or applications for patents to the Chief of Naval Research for transmittal to the Commissioner of Patents and Trademarks.

PART 5228

BONDS AND INSURANCE

SUBPART 5228.1--BONDS

5228.106 Administration.

Questions or requests for guidance regarding bonds may be submitted to APIA-PP.

SUBPART 5228.3--INSURANCE

5228.301 Policy.

(a) (1) DoN policy is to rely upon the commercial insurance industry to the maximum extent practicable to protect contractors against risks arising under contracts.

(2) In some situations, however, it may be preferable or necessary to provide Government indemnification--

(i) Where there is a continuing program, such as for nuclear vessels, and insurance premium costs over a period of time could equal the amount of coverage;

(ii) A war risk in areas where hostilities are involved;

(iii) Where the cost of insurance is so excessive it is unreasonable and constitutes a "turndown quotation";

(iv) Where the Government risk is rated only on its isolated experience and not shared with the risks of others, whether or not the risk is unusually hazardous;

(v) Where an urgent requirement allows insufficient time to receive a competitive insurance quotation;

(vi) Where the degree of risk is either very small or catastrophic; or

(viii) Where indemnification of the deductible portion of insurance coverage will substantially reduce insurance costs.

(b) All matters concerning indemnification shall be referred to APIA-PP for decision or recommendation sufficiently in advance of contract award.

5228.301-90 Authority.

(a) APIA-PP is authorized to act by direction of the Secretary of the Navy, or as the duly authorized representative of the HCA, the contracting officer, or any other Naval official designated in the contract to:

(1) Require or approve contract insurance; and

(2) Execute, sign or endorse all lost policy releases; proofs of loss; subrogation agreements; endorsements of policies for claims and/or return premiums; payment orders; and insurance drafts made payable to the Secretary of the Navy and not affecting the obligation of appropriations.

(b) APIA-PP shall determine, under the Marine Builder's Risk Policy of shipbuilding contracts, whether the Government has assumed the risk of loss, and the

extent of any Government responsibility, regarding contractor claims for loss or damage over \$250,000. The Commander, NAVSEASYSCOM is authorized to make such determinations where loss or damage is \$250,000 or less, and is authorized to delegate this authority to Supervisors of Shipbuilding, Conversion and Repair having resident counsel.

5228.301-91 Payment of claims to third parties.

The following procedure shall be used in making all payments under contracts in which the Government assumes the risk of liability to third parties and such liability is not compensated for by insurance or otherwise:

(a) When a claim is made for loss of or damage to property, death or bodily injury arising out of performance of a contract, the officer in charge (OIC) shall submit to the cognizant contracting activity:

- (1) statements of all pertinent facts;
- (2) the OIC recommendation and the contractor recommendation as to the action to be taken with respect to the claim; and
- (3) the amount, if any, to be paid.

(b) The contracting activity shall promptly forward the information via the HCA to APIA-PP for determination of whether the Government has assumed liability for the claim and if so, the amount to be paid.

(c) If APIA-PP determines that the Government has assumed liability for the claim, the third party shall be paid the amount fixed by APIA-PP unless pursuant to appeal by the contractor under the Disputes clause, a different amount is allowed.

(d) If APIA-PP determines that the Government did not assume liability, no payment shall be made, unless pursuant to appeal by the contractor under the Disputes clause, a different decision is made.

5228.303 Insurance against loss of or damage to Government property.

5228.303-90 Liability of subcontractors for Government property.

(a) In general, the DoN will not take the risk of loss with respect to Government property while in the possession of subcontractors.

(b) However, under cost-plus-fixed-fee contracts, contracting officers may, when in the best interest of Government, and with the concurrence of APIA-PP, provide for the flow down of paragraph (g) of the clause at FAR 52.245-5, Government Property (Cost-Reimbursement, Time and Material, or Labor Hour Contracts), to cost-plus-fixed-fee subcontracts.

5228.304 Risk-pooling arrangements.

APIA-PP will confirm to the cognizant contracting activity the amount of premium due and, if the funds allocated to the contract are not sufficient, the amount due shall be paid as an item of cost under the contract out of other appropriate funds.

5228.307 Insurance under cost-reimbursement contracts.

5228.307-90 Liability of subcontractors to third parties.

(a) In general, DoN will not assume liability of subcontractors to third parties.

(b) However, under cost-plus-fixed-fee contracts, contracting officers may, when in the best interest of Government, and with the concurrence of APIA-PP, provide for flow down of the clause at FAR 52.228-7, Insurance--Liability to Third Persons, to cost-plus-fixed-fee subcontracts.

5228.308 Self-insurance.

Refer all matters concerning self-insurance covering any kind of risk to APIA-PP.

SUBPART 5228.90 INSURANCE UNDER LEASES

5228.9000 General.

When the Government property is leased under the authority of 10 U.S.C. 2667, the lessee, at its own expense, shall insure the property and the liabilities of itself and the Government to third parties, including employees.

5228.9002 Waiver.

The requirement to insure the property may be waived by APIA-PP when more than 75% of its use is for Government work. In such case the Government will assume the risk of loss or damage to the property and the lease will be modified accordingly.

5228.9003 Lessee Requirements.

Where insurance is required:

(1) The lessee, for the period of the lease, shall purchase and maintain Fire and Extended Coverage insurance or its equivalent and, if applicable, Boiler and Machinery insurance, in an amount equal to replacement value less depreciation or in any lesser amount determined by the contracting officer.

(2) Lessee will provide insurance on special types of property (e.g. floating drydocks, mobile power plants, etc.) as designated by APIA-PP.

(3) When a co-insurance clause is used, failure of the lessee to maintain adequate insurance will not relieve the lessee of its responsibilities under any other terms of the lease.

5228.9004 Insurance Policies.

(a) Insurance policies for leased property shall be issued in the names of the lessee and of the Department of the Navy and shall contain a loss payable provision as follows: "Loss, if any, under this policy shall be adjusted with (Lessee) and the proceeds, at the election of the Government, shall be payable to the (Lessee); any proceeds not paid to the (Lessee) shall be payable to the Treasurer of the United States."

(b) Each insurance policy shall contain a provision for thirty days prior notice to APIA-PP in the event of cancellation of the policy.

(c) A certificate of insurance or copy of each insurance policy shall be deposited with APIA-PP.

5228.9005 Contracting officer requirements.

(a) Leases involving significant insurance costs shall conform to the requirements of the FAR. If required, modify existing leases.

(b) Refer all questions in connection with subpart to APIA-PP or, with respect to form and legality, to the Office of General Counsel.

PART 5229 TAXES

SUBPART 5229.2--FEDERAL EXCISE TAXES

5229.201 General.

(b) (i) Tax exemption certificates will be issued as authorized by FAR Subparts 29.2 and 29.3. Tax exemption certificates will not be issued for small purchases requiring payment in cash through the use of the imprest fund procedures.

(ii) Tax exemption certificates will be issued to contractors by:

- (A) Contracting officers;
- (B) Ordering officers in the case of indefinite delivery type contracts;
- (C) Disbursing officers under Defense Fuel Supply Center contracts, when applicable;
- (D) Other procurement personnel as authorized by contracting officers.

PART 5230

COST ACCOUNTING STANDARDS

SUBPART 5230.2--CAS PROGRAM REQUIREMENTS

5230.201 Contract requirements.

5230.201-5 Waiver.

(a) Submit the information to APIA-PP. Include it as an enclosure to the initiating communication and number the paragraphs sequentially in the same order as FAR 30.201-5.

(7) Include the estimated date of contract award and justification, if any, for the urgency of award if the estimated date of award is less than sixty (60) days from date of submission. In the case of contracts to be placed with foreign concerns, request DCAA to provide, where applicable:

(A) Any accounting requirements imposed on the foreign concern by the foreign government which are incompatible with the cost accounting standards;

(B) Any accounting requirements imposed on the foreign concern by the foreign government which are sufficiently unique that compliance by the concern with the cost accounting standards would not be feasible; and

(C) The cost impact on U.S. Government contracts with the foreign concern if the cost accounting standards were required to be followed by the concern. If, on the basis of information developed by DCAA, it appears that the foreign concern could reasonably comply with modified coverage, renew efforts to obtain its acceptance of the modified coverage. If, despite renewed efforts, the foreign concern still refuses to comply, obtain a further written statement of its position which discusses in detail each of the DCAA findings and the rationale for the continued refusal.

5230.202 Disclosure requirements.

5230.202-2 Impracticability of submission.

Submit requests for impracticability determinations following the requirements and format of 5230.201-5.

5230.202-8 Subcontractor disclosure statements.

(f) Requests for an ASN (RD&A) impracticability determination shall be submitted in the same form, contain the same information, and be processed in the same manner as set forth in 5230.201-5.

PART 5231

CONTRACT COST PRINCIPLES AND PROCEDURES

SUBPART 5231.1--APPLICABILITY

5231.109 Advance agreements.

(a) All advance agreements, including those negotiated pursuant to the Cost Accounting Standards Board's promulgated rules and regulations (e.g., advance agreements with contractors on shorter depreciation periods for certain assets as provided in CAS 409.50(e)(5)) are subject to the approval requirements in (f) and (g) below.

(f) and (g) Pursuant to 5201.690-6, business clearance approval shall be obtained from APIA-PP for all advance agreements on the treatment of special or unusual costs.

5231.205-26 Material costs.

(DAR COUNCIL DEVIATION #90-940 - 29 AUGUST 1990) NAVSEASYS COM, in their Naval Nuclear Propulsion Program prime contracts with Westinghouse and General Electric, is authorized to deviate from (i) FAR 31.205-26 to allow for reimbursement of interorganizational transfers at price when the criteria in FAR 31.205-26 are not met; and (ii) FAR 52.246-24 to allow use of a modified clause.

PART 5232

CONTRACT FINANCING

SUBPART 5232.4--ADVANCE PAYMENTS

5232.402 General.

(e) All delegations of authority with respect to advance payments under 10 U.S.C. 2307 conferred upon the Secretary of the Navy have been delegated to the ASN(FM). This authority has been redelegated to the Director, Office of Financial Management Systems (NCF), Office of Navy Comptroller, who will make the necessary determinations and findings and approve contract terms concerning advance payments. Requests for advance payments shall be submitted via APIA-PP.

SUBPART 5232.5--PROGRESS PAYMENTS BASED ON COSTS

5232.501 General.

5232.501.-2 Unusual progress payments.

(a) Requests for unusual progress payments pursuant to FAR 32.501-2 shall be forwarded via APIA-PP.

5232.502 Preaward matters.

5232.502-91 Disbursing.

(a) Disbursing by Defense Contract Management Area Operation (DCMAO). Contracts which designate a DCMAO as the paying office shall provide for the contractor's invoices to be submitted directly to the DCMAO.

(b) Disbursing by DoN offices.

(1) Acceptance at Contractor's Plant. Where acceptance is at origin, contracts which designate a Navy Regional Finance Center or other DoN activity as the paying office shall provide for the contractor's invoices, accompanied by the paying office copies of the related Material Inspection and Receiving Reports (DD Forms 250), to be submitted directly to the paying office.

(2) Acceptance at Destination. Where acceptance is at destination, contracts which designate a Navy Regional Finance Center or other DoN activity as the paying office shall provide for the contractor's invoice to be submitted to the consignee.

SUBPART 5232.6--CONTRACT DEBTS

5232.602 General.

NAVCOMPT Manual, par. 040703 covers ascertainment and collection of debts owed by a contractor, including deferred collection.

5232.690 DoN claims against a contractor.

(a) General. It is essential that DoN personnel take prompt action to document the basis and reasons for the claim and, when possible, to settle the claim by negotiation with the contractor.

(b) Claim reporting. For all Government claims which exceed \$500,000, HCAs shall provide quarterly and summary reports to APIA-PP in accordance with the procedures of 5233.9001(a) and (b).

(c) Claim documentation. The same standards of claim documentation required for contractor claims (see 5233.9000) shall also be applicable to Government claims.

(d) Claims review and approval. The review and approval requirements of 5233.9001(c) apply to the settlement of DoN claims against contractors.

(e) Contractor appeals. In the event settlement by negotiation cannot be achieved, a Contracting Officer's decision shall be promptly issued in accordance with the "Disputes" procedure of the pertinent contract. This decision shall set forth the basic facts of the dispute and the details of the DoN's claim against the contractor. In preparing the decision and processing the dispute, when an appeal is taken by the contractor, the appeal procedures outlined in 5233.9002 shall be followed.

SUBPART 5232.7--CONTRACT FUNDING

5232.790 Establishment of obligations.

(a) NAVCOMPT Manual, Volumes 2, 3, and 6 implement section 1311 of the Supplemental Appropriation Act, 1955 (31 U.S.C. 200), which established the prerequisites to the recording and reporting of an obligation. Particular attention is invited to the special provisions in the NAVCOMPT Manual relating to spare parts, special tools, or other equipment included in a contract in an estimated lump-sum amount.

(b) An obligation will be recorded against applicable appropriations or funds only when supported by documentary evidence properly signed before expiration of the period during which the appropriation or fund is available for obligation. Contracts, agreements, orders requiring acceptance, amendments for new requirements, and similar documents requiring two signatures to be valid obligations must have both signatures affixed prior to expiration for obligation of the appropriation or fund involved. Signatures to such obligating documents will be dated the day that they are affixed to the document. Such signatures will not be given as "as of" date. The date of the last required signature determines the date of the obligation for recording purpose. If such obligating document requires the signature of the contractor and the contracting officer and is signed by the contracting officer subsequent to signing by the contractor, the signature of the contractor need not be dated, provided the following statement is affixed on each original signature page directly below or adjacent to the signature of the contracting officer: "Signed by Contracting Officer on _____ subsequent to signing by the contractor."

(c) Conformed copies of all obligating documents shall be furnished for the recording of obligations. These copies need not be signed by either party, nor need they set forth in full the names of the individuals signing, their official titles, or the names of the contractors and the contracting activities concerned. In lieu thereof, notations or stamps may be applied, such as "Signed on behalf of Contractor" and "Signed on behalf of Government." However, all such conformed copies shall either set forth fully the dates of the signatures on behalf of both parties or will clearly identify the party last signing and set forth fully the date of that signature.

5232.791 Obligation of transportation cost in purchase documents.

(a) Pursuant to the authority of NAVCOMPT Manual 032100 and consistent with FAR 31.205-45, the cost of transportation of material to first destination is usually charged to the Navy Management Fund with subsequent reimbursement by the appropriation involved. However, if the contract provides that the cost of transportation either is to be included in the purchase price or is to be paid by the supplier subject to reimbursement by the Navy (i.e., the amount of the obligation established by the contract includes the cost of transportation), the transportation cost will be charged to the same accounting data which is charged for the cost of the material. When the contract includes the cost of transportation the estimated transportation cost must be considered together with the cost of the material or the contracting office may be guilty of over obligating the amount of funds cited in the requisition, or other purchase authorization, in violation of Section 1517, Revised Statutes (31 U.S.C. 665).

(b) Contracting officers are responsible and will ascertain that actual or estimated transportation costs chargeable to the purchase funds of the Navy will not, in conjunction with the purchase price, result in an over obligation. When the supplier is to be reimbursed for transportation costs, the contracting officer shall include an estimate of such costs in the contract under the appropriate data, as follows: "For obligation purposes only, the transportation costs chargeable to the funds indicated above are estimated to be \$_____." These estimated transportation costs will not be included in the total posted in the "Amount" blank on the face of the purchase document; however, the words "PLUS TRANS" will be inserted within the "Amount" blank to alert interested personnel to this additional obligation.

(c) No purchase document shall provide for reimbursable transportation costs where initial destination is unknown.

5232.792 Accounting and appropriation data.

(a) Every contract or order shall indicate the accounting code numbers (appearing in the purchase request) under which payments on the contract or order are to be made. Applicable accounting data shall also be shown on any change order or contract amendment that revises the accounting data for any item or increases or decreases the total amount of a contract. Such accounting data shall be shown either in the proper spaces in the preprinted format on the purchase document or in the exact same format. When an element is not present, insert a zero in the appropriate column or opposite the applicable abbreviations used to correspond to the headings listed under "accounting and appropriation data" on the Form 1155 (as overprinted for Navy Accounting data). The accounting and appropriation data represents the accounting classification reference number (ACRN): Appropriation and subhead, object class, bureau control number, sub-allotment number, authorization accounting activity, type code, property accounting activity and cost code.

5232.793 Responsibility for accounting classification and payments data.

(a) The contracting office is responsible for ensuring that all contracts and modifications are written in such a manner that all quantities, items, tasks, services, etc., required by the contract or modification can be related to specific accounting classifications cited in the contract or modification. Purchase Requisitions and other procurement request type documents received from requiring activities should be written in a similar manner or returned to such activities with a request for clarification. Further, all shipping instructions issued under the contract or by modification must identify the Contract Line Item Number (CLIN), Subline Item Number (SLIN) and Accounting Classification Reference Number (ACRN), which will permit identification of the accounting classification to which each quantity of each item, service, or task, is properly chargeable. Contracts shall require that the contractor cite the CLIN, SLIN, and ACRN, reflected in the shipping

instructions, on applicable invoices. This will permit proper payment by the applicable disbursing office and will ensure reporting of the disbursement to the appropriate Authorization Accounting Activity. When requested, the "Paying Office(s)" designated in the contract to make payments under the various appropriations, will promptly provide the contract administration office with information as to the amounts paid under the contract by each ACRN.

SUBPART 5232.9--PROMPT PAYMENT

5232.903 Policy.

For Prompt Payment Act purposes, every contract, including an action accomplished by small purchase procedures, shall indicate on its face whether the payments under it are:

- (a) Subject to the 7 calendar day constructive acceptance period;
- (b) Subject to acceptance terms other, than (a) above; or
- (c) Not subject to the Prompt Payment Act.

PART 5233

PROTESTS, DISPUTES, AND APPEALS

SUBPART 5233.1 (DFARS 233.1)--PROTESTS

5233.103 Protests to the Agency.

(a) (2) Determination to proceed with award prior to resolving the protest shall be made at a higher level within the contracting activity than the contracting officer.

(b) (1) The contracting officer is designated to receive protests submitted by interested parties.

5233.104 (DFARS 233.104) Protests to GAO.

(g) The responsibility to report to the Comptroller General is delegated to HCAs without power of redelegation. HCAs shall consult with APIA-PP before any final decision is reached not to implement GAO's recommendations. A copy of each report shall be provided to APIA-PP concurrent with the submission to the Comptroller General.

SUBPART 5233.2--DISPUTES AND APPEALS

5233.201 Definitions.

"Disruption", as used in this part, means the cost effect upon, or the increased cost of performing, the unchanged work due to a change to the contract.

"Delay", as used in this part with respect to contractors, claims or requests for equitable, adjustments, means the time-oriented cost effects or length of a suspension in scheduled contract work or a period of time-oriented cost effects or length of a suspension in scheduled contract work or a period of time a contractor is required to perform beyond the contract delivery or completion date, allegedly due to contractually remediable Government actions or inactions. Delay can be expressed in terms of time or cost or some combination of time and cost.

5233.203 Applicability.

(b) The HCA is the designated official for making a determinations that the application of the Act to the contract would not be in the public interest. This authority cannot be redesignated.

5233.204 (DFARS 233.204) Policy.

5233.204-90 General.

Acquisition programs must be conducted in a manner calculated to minimize the occurrence of claims by the contractor. Further, those claims which arise despite appropriate precautions must be resolved as promptly as prudence permits by those most directly involved. The causes of claims must be minimized through realistic planning and contracting, careful attention to the action required to meet the DoN's obligations and tight control over the changes process. Occurrences which may lead

to claims must be recognized as they happen and appropriate action initiated promptly. Elements of Naval activities at all levels are expected to face claim situations squarely, report them to the appropriate levels of management, take prompt action to get the facts, make an objective analysis, and seek prompt resolution. Dealings will be fair and open with the expectation of equal consideration from contractors. Delay in resolution of claims by and against contractors can produce a serious impact upon the business relationship between the DoN and its contractors. Thus, resolution of claims must receive a high priority and degree of attention at all levels.

(a) Multi-discipline approach. Claims by contractors often involve difficult and complex legal, factual and financial issues requiring extensive fact-finding or analysis to determine whether or not the Government is liable. In many situations, a multi-discipline team approach involving technical, engineering, procurement, audit and legal personnel may be the most efficient and expeditious means of evaluation to assure both protection of the Government's interest and a fair and objective resolution. Thus, when such a claim is submitted by a contractor, or even prior to its receipt, or when it is known that such a claim will be filed, Navy activities should consider the establishment of a multi-discipline Claims Team and the appointment of a Claims Team Manager who will be responsible for identifying the kinds and number of resources which may be required for timely analysis of the claim. The Claims Team Manager will coordinate with the Defense Contract Audit Agency and the Office of General Counsel to ensure that auditors and attorneys are assigned to the team.

(b) Formal and constructive changes.

(1) In those cases where DoN actions (or inactions) alleged by the contractor, after appropriate evaluation, constitute a change, the contracting officer should promptly formalize such constructive change(s) in writing as soon as the parties have negotiated an acceptable adjustment to the contract price and delivery clauses, irrespective of whether the contract contains the clause at FAR 52.243-7, Notification of Changes. Negotiation and settlement of such changes should be handled in accordance with FAR 42.302(b) (1). The procedures in (3) below may be used on an exception basis where the contractor has not presented a full disclosure of pertinent facts or a timely determination of DoN responsibility is not feasible.

(2) With respect to those formal written changes as to which the contractor alleges a factual or other interrelationship with a claim, activities should exert every effort to equitably adjust such changes coupled with allowance for any disruption or delay impact determined to be appropriate by the contracting activity.

(3) In exceptional cases where disruption, delay or other claimed impacts are known to exist and cannot be currently resolved, the contracting activity may proceed with equitable adjustments covering the interrelated formal changes coupled with usage or qualified release. The qualified release should specifically identify the inter-relationship with the contractor's claim such as delay or disruption impacts reserving to the contractor the right to pursue and demonstrate support for a separate equitable adjustment therefore under the contract.

(c) Rejection of "total cost" and "total time" based claims.

(1) Contractors have occasionally submitted claims based on "total cost" or "total time" approaches, i.e., they have asserted that the government was wholly responsible for all costs incurred in excess of the contract price, or for all delay, without proof that such excess costs or delays were caused by government conduct; not by contractor conduct or by concurrent causes. Yet in changes claims there is a well-established requirement to demonstrate causality between the change and resulting quantum. This derives from the terms of the Changes clause itself: "...if any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the work..." The total cost approach is suspect because it assumes that the contractor's initial contract price was reasonable; that the government alone caused the contractor's increased costs; and that the contractor's performance costs were reasonable. Only in few rare cases has the total

cost approach been accepted, and then only as a "last resort"; when the contracting officer did not make the sort of equitable adjustment required by the Changes clause and the circumstances allowed the contracting officer, board or court to accept the three foregoing assumptions.

(2) A claimant filing a total cost or total time based claim has the burden of establishing that there is no other feasible, acceptable basis for computing the claimant's increased costs or delays. The claimant must prove that there is no way of correlating government actions and omissions to historical cost elements or even to reasonable substantiated cost estimates. If the contractor (claimant) fails to sustain this burden, then as a policy matter the DoN should reject any contractor claim premised on a "total cost" or "total time" approach.

5233.206 Initiation of a claim.

(a) Criteria for submitting, documenting and processing contractor contractor claims.

(1) Some contractors have submitted claims, portions of which, upon review are found to be exaggerated, inflated, or unsupportable. Grossly overstated claims suggest the potential for false claims, false statements, or fraud. Claims sometimes fail to differentiate between factual and judgmental assertions and to support all assertions with specifically identified evidence. Such submission can delay and frustrate the DoN's claim review analysis and evaluation. Thus, as soon as a claim is received preliminary review should be conducted to determine whether or not adequate documentation exists to commence a full and comprehensive analysis. Accordingly, it is necessary to take steps to promote more readily reviewable claim submissions by establishing requirements for the evidentiary documentation of claims and by requiring responsible contractor officials to certify the claims submitted (see FAR 33.207).

(2) The general criteria for information required to support claim settlement include the existence of a legal basis for entitlement, facts meeting the elements of proof required to support the basis of entitlement, and adequate factual support for the amounts claimed. The DoN should require a proper claim submission on the basis provided in the changes clause, namely, a basis factually demonstrating documented scopes of work correlated to provable instances or categories of government liability. The DoN should, in all cases, require demonstration of causal support and documentation of quantum in as much specificity as the facts will permit.

(3) Claimants should be advised that all claim assertions must be supported by specifically identified evidence (including applicable historical and planned cost and production data from the contractor's books and records), and that opinions, conclusions or judgmental assertions not supported by such evidence, or by a sound and reasonable rationale, which is fully discussed, are without probative value and unacceptable.

(4) An individual SF 1411, Contract Pricing Proposal Cover Sheet, shall be submitted for each element of a contractor's claim at the time of the initial claim submission, for any material revision of the claim and prior to the execution of a settlement agreement on the claim. (See FAR 15.804-6(b) and Table FAR 15-5, Instructions for Submission of a Contract Pricing Proposal.)

(5) Since the burden of proof of a claim rests with the claimant, the DoN should reject any claims which fail to meet any of the requirements set forth in 5233.9000, and consider returning claims which suffer from the defects noted in subparagraph (3) above. Any rejection should be accompanied by an indication to the claimant of the areas or types of deficiencies which form the basis for the rejection. Claimants may be given an opportunity to resubmit such claims in the proper manner, unless it is apparent from the contractor's submission that the claim is without foundation.

(6) If, after resubmission of an initially rejected claim, and through review and evaluation thereof by the DoN, the parties are unable to agree upon a settlement

of the claim, the DoN should not normally entertain another claim resubmission. Instead the contracting officer should issue a final decision pursuant to FAR 33.211 determining to what extent, if any, the claim is acceptable and to what extent it should be denied.

(7) Where contractor actions or inactions are likely to result in a claim or to delay timely and equitable resolution of claim issues, or contract performances may be impaired, higher level assistance will be promptly sought.

(8) FAR 33.208 requires the Government to pay interest on certain claims. When it is necessary for the Contracting Officer to obtain additional contract funding in order to honor the Government's obligations in an interest bearing situation, the contracting activity shall notify APIA-PP by message. The message should be sent priority precedence, with copy to the appropriate SYSCOM and Project Office. Send a follow-up message every 30 days until funding is provided. The SSIC for these messages is N07130 and the following subject should be used: Contract Settlement with Interest for Unfunded Claim Provision. The message should provide the following data:

- (A) Contract deliverable,
- (B) Contractor,
- (C) Contract number,
- (D) Date of contract settlement,
- (E) Total amount of settlement (Show the appropriation. If more than one appropriation, then apportion the interest penalty by appropriation.),
- (F) Date of start of interest penalty,
- (G) Amount of daily interest (Show the appropriation. If more than one appropriation, then apportion the interest penalty by appropriation.),
- (H) Additional funds required,
- (I) Any amplifying information, and
- (J) Name of contracting officer/phone number.

5233.209 Suspected fraudulent claims.

The Navy Inspector General is the agency official responsible for investigating fraud.

5233.211 Contracting officer's decision.

(b) Copies of the contracting officer's decision will receive the same distribution as the related contract and also will be furnished to any assignee, guarantor, or surety of the contractor. In addition, a legible copy of the decision shall be forwarded to the Office of the General Counsel, Legal Services Support Group, Navy Litigation Office, Department of the Navy, Washington, DC. 20360 at the time of transmittal to the contractor.

SUBPART 5233.70 (DFARS 5233.70 **--CERTIFICATION OF CLAIMS AND** **REQUESTS FOR ADJUSTMENT OR RELIEF**

5233.7000 (DFARS 233.7000) Policy.

Examples of requests subject to the certification requirements would be those made under the "changes," "Government Property," "Termination for Convenience of the Government," "Government Delay of Work," "Stop Work Order," and "Insurance-Liability to Third Persons" clauses. Excluded from the certification requirement are new procurement modifications, changes or modifications, changes or modifications of the contract of a prospective nature that are fully priced, and routine contract payments (e.g., requests for payment for delivered and accepted supplies and services, vouchers under cost reimbursement contracts, and progress payment invoices).

SUBPART 5233.90--PROCEDURES

5233.9000 Documentation of significant contract events.

(a) General. Proper resolution of contractor claims is dependent upon the adequacy of both the available contractor and Government information concerning the relevant facts. Effective presentation and analysis of a claim requires the contractor to reconstruct events, actions, circumstances and conditions that may have taken place long since. This reconstruction process is complicated by the impact of other past transactions and events that are not germane to the issues involved and must be separated therefrom. Adequate documentation is the key to the Government's ability to verify, qualify or refute matters which a contractor presents in support of, or as the basis of, the contractor's claim.

(b) Applicability. A record of significant events, in accordance with paragraphs (c), (d) and (e) below, shall be maintained by the contract administration office with respect to:

(1) All contracts in excess of \$5,000,000; and

(2) All contracts, regardless of dollar amount, wherein the officer in charge of the contract administration office has determined a reasonable possibility exists that a claim may be asserted thereunder.

(c) Record of significant events. Field contract administration offices shall be instructed to maintain, on a continuing bases (daily when necessary), a record narrative summarizing significant events as they occur during the performance of each contract specified in paragraph (b) above. The record shall document events as prescribed in paragraph (d) below with the type of information described in paragraph (e) below. The record shall be supplemented by photographs, references to key documents, or other information as necessary and appropriate, to assure a complete and independent record of contractor performance in the event of subsequent claims.

(d) Events to be documented. The significant events documented shall include, but shall not be limited to, those matters which have a bearing upon the following areas:

(1) Delivery schedule changes or problems;

(2) Drawings, designs and specification which are ambiguous, defective or impossible of performance;

(3) Differences in interpretation of contract provisions;

(4) Delay and disruption of contractor effort;

(5) Changes in method or sequence of work;

(6) Late or defective Government furnished property or information;

(7) Rejections, rework, waivers and deviations;

(8) Planned vs. actual performance milestones;

(9) Delays in Government actions such as processing engineering change proposals, consent to subcontracts and review of technical data;

(10) Contractor error and non-compliance with contract terms; and

(11) Any other Government actions or inactions (excluding formal written change orders) which have the effect or requiring the contractor to perform work different from that prescribed by the original terms of the contract.

(e) Type of information. To the extent applicable, the following information concerning each event recorded shall be provided:

(1) The nature and pertinent circumstances of the event;

(2) The date of the event and the identification of Government and contractor personnel involved, including name and function of the respective individuals;

(3) Identification of any relevant document involved;

(4) The substance of any oral communications; and

(5) A statement concerning the possible consequences or effects of the event described upon the contract cost, schedule, or technical performance, including manner or sequence of performance.

(f) File maintenance. The records concerning significant events shall be kept in a separate folder or folders for each contract and identified as the "significant events" file. Those records which are already maintained separately as part of the contract file in accordance with FAR Subpart 4.8 need not be included in the Significant Events file. Where pertinent documents needed to complete the record are located elsewhere than in the contract file, copies of such documents or cross-references thereto, shall be included in the significant events file. All non-factual information (i.e., opinions and conclusions expressed by any representative of the contract administration office, and privilege, legal advice of counsel) contained in the significant events file shall be marked "FOR OFFICIAL USE ONLY."

5233.9001 Claims reporting, review, and approval requirements.

(a) Quarterly claim reports. No later than 15 days after the end of each fiscal quarter, HCAs shall submit to APIA-PP, quarterly claim reports covering all contractor's claims in excess of \$1 million that have been certified under the Contracts Dispute Act. This report is to include claims received by both the headquarters and all field activities under the cognizance of the HCA. Negative reports are required. The report is to include the ten elements of information identified below for each new claim included in the report. For previously reported claims, information element number (10) shall be updated to discuss progress made. In addition, all changes of dollar amounts of claims under review, or before the ASBCA and Court of Claims, shall be explained. Final disposition of the claim shall also be discussed in the report when such action occurs. The quarterly reports shall include the following information:

- (1) Contractor's name;
- (2) Contract number; description of supplies or services; contract price or estimated total cost;
- (3) Date written claim received;
- (4) Amount of claim (e.g., breakdown of quantum for claimed hardcore, delay, disruption, etc.);
- (5) Alleged basis of claim (e.g., various constructive changes, suspensions, late and defective GFI/GFE, etc.);
- (6) Participating activities or agencies (e.g., SUPSHIP, DCMAO, USAF, etc.);
- (7) Assessment of validity of claim where possible;
- (8) Current status;
- (9) Provisional payment; and
- (10) Planned handling and disposition of claim, including a milestone plan of action for disposition of the claim.

(b) Summary of quarterly claim reports. The quarterly report required under (a) above shall be accompanied by a summary report in the format shown in Table 5233-90 . Claims returned to the contractor for insufficient documentation should not be included in the summary report.
(in millions)

TABLE 5233-90 FORMAT FOR QUARTERLY CLAIM REPORTS
(COMMAND OR CONTRACTING ACTIVITY)
SUMMARY OF CLAIMS INVENTORY - \$1 MILLION AND OVER

QUARTER ENDING_____					
(in millions)					
Contractor, Contract No. & Program	Under		Court of		Provisional
	Review	ASBCA	Claims	Total	Payment
	No. Amt.	No. Amt.	No. Amt.	No. Amt.	Amt.

(d) Claims review and approval. All proposed claim settlements will be reviewed and approved in accordance with the criteria as shown in [Table 5233-91](#).

(1) Review and approval of claims settlement and contracting officer's final decisions. (i) APIA is the senior advisor to ASN(RD&A) on all matters relating to claims, and will provide for the review of all (i) proposed claim settlements in excess of \$10 million; and (ii) final decisions of the contracting officer involving payments in an amount greater than \$10 million ([see Table 5233-91](#)). At the discretion of APIA, this review will be conducted by either an individual not below the Flag/SES level or an ad hoc claims board. When an ad hoc claims board is used, the chair and membership will be appointed by APIA. A legal advisor will be used on all reviews. APIA will be the final approval authority and will obtain the concurrence of ASN (RD&A).

(ii) At the option of the HCA, any proposed claim settlement or final decision of the contracting officer within the HCA's approval level shown in [Table 5233-91](#), may be submitted to APIA for review or advice. If a proposed claim settlement or final decision of the contracting officer is within the HCA's approval level, the HCA is authorized to approve such settlement. This HCA authority may not be delegated to any official below the Deputy/Assistant Commander for Contracts.

(2) Requirements for legal memorandum. The supporting documentation submitted to APIA with respect to claim settlements or final decisions of a contracting officer will include a legal memorandum. As a minimum the required legal memorandum should:

(i) Analyze the applicability and adequacy of the contractor's legal theory or theories of Government liability;

(ii) Analyze and evaluate the presence and adequacy of evidentiary facts satisfying the elements of proof required by such legal theory or theories;

(iii) Analyze the applicability and adequacy of any affirmative defense the Government may have to the contractor's claim, e.g., accord and satisfaction, failure of consideration, fraud, release, laches, statute of limitations; and

(iv) Analyze and evaluate the presence of any counterclaims the Government may have against the

(3) Commitment and clearance. No settlement commitment or final decision shall be made prior to obtaining the required approval.

(4) Provisional increases in contract prices. Primary emphasis should continue to be given to achieving prompt settlement of claims, thereby obviating need for provisional price increases or payments. Provisional price increases or provisional payments against contractor claims may be made when the following documents have been obtained:

(i) A legal determination that the contractor is entitled to compensation.

(ii) Sufficient technical, administrative, and audit analyses to permit such legal determination; and

(iii) A determination by the contracting officer with respect to the amount of compensation for which there is entitlement and that the amount of ultimate entitlement to compensation will equal or exceed the amount of the provisional price increase or provisional payment.

5. Written justification. Unless otherwise authorized by APIA, when a provisional payment, either individually or cumulatively against a single claim exceeds \$10 million, a written justification shall be submitted to APIA for approval. The justification shall cover--

(i) the requirements of the claim;

(ii) the projected date of settlement of the claim; and

(iii) other pertinent information, including comments as to whether the contractor has reasonably satisfied all request for documentary and analytical support of the claimed amount.

(e) Implementation.

(1) HCAs shall give wide dissemination to and implement these policies and procedures, including establishment of the appropriate delineation of authorities within each activity.

(2) These policies shall apply to all pending and future contractor claims.

(3) Persons and boards required to review the proposed dispositions of contractor claims shall assure that these policies were followed in the processing and evaluation of the claim under review.

TABLE 5233-91

REVIEW AND APPROVAL CRITERIA

Amount or Claim Settlement	Review	Approval
\$10 million or less	Deputy/Assistant Commander for Contracts	HCA or designee
Amount of Claim Settlement	Review	Approval
More than \$10 million	APIA designee or review board	APIA

5233.9002 Contractor appeals to the Armed Services Board of Contract Appeals (ASBCA).

(a) General. The office of the General Counsel (OGC) has sole litigation authority for all appeals under DoN contracts to the ASBCA. Because of the frequent complexity of these cases, the OGC and the contracting activity involved should maintain the continuity of any DoN claim team which might have investigated and evaluated the contractor's claim submission. Such teams should continue to function in an assisting capacity under the leadership of the OGC Trial Attorney assigned to handle the appeal.

(b) Contracting officer decisions. Copies of all executed contracting officer decisions shall be forwarded, at time of issuance for appropriate action to the Litigation Division of the OGC.

(c) Contractor notices of appeal. When a notice of appeal in any form is received by the contracting activity, the contracting officer is required by Rule 3 of ASBCA Rules (DFARS, Appendix A) to forward it to the ASBCA. This should be done by contracting activity counsel on behalf of the contracting officer, with a copy to the Litigation Division.

(d) Documentation requirements. The Litigation Division shall be furnished four (4) sets of the documents pertinent to the appeal required by Rule 4 of the ASBCA Rules. The contracting officer shall compile these documents promptly with the advice and assistance of contracting activity counsel. These Rule 4 documents, which at a minimum should include all of the documents relied upon by the contracting officer in reaching a final decision, should be arranged in an orderly fashion (preferably in chronological order), indexed, numbered and tabbed. All pages should be clear and legible . If additional documentation is deemed to be necessary, the Litigation Division shall make the request for such documentation, and if it is available, the contracting officer shall furnish said documentation with the assistance of contracting activity counsel. Rule 4 requires that the documents be filed within 30 days after receipt of the notice of appeal. If more time is needed the Litigation Division shall be advised so that it may request an extension of time

from the ASBCA. Such extensions shall be requested only when necessary and not as a matter of course. In field contracting offices not having assigned counsel, the Litigation Division will work directly with the contracting officer in obtaining the Rule 4 documents. Upon receipt of the Rule 4 documents, the Litigation Division will assume the responsibility for transmitting a copy to the Board and for meeting the additional requirements of Rule 4 with reference to the appellant.

(e) Litigation report requirement. With the compilation of Rule 4 documents, a comprehensive litigation report shall be forwarded to the Litigation Division. At a minimum, the report should include:

(1) A detailed narrative statement of facts, preferably in chronological sequence, and with a topical segregation when appropriate, with references to attached supporting documents of expected testimony. If such a statement was previously submitted pursuant to paragraph (d) above, it need not be submitted a second time, but should be supplemented or revised if additional information becomes available in the interim.

2. An analysis and evaluation (classified as attorney-client privileged information) of the factual and legal positions of both sides (including affirmative defenses and counterclaims available to the Government), the available evidence, and the expertise and effectiveness of prospective witnesses.

(3) The advisory report, if any, of the reviewing official or board.

(f) Team cooperation. Contracting activities shall cooperate with the Litigation Division in connection with the conduct of an appeal. Arrangements for staff assistance and support in the development of the appeals case shall be effected by agreement among trial attorney, contracting activity counsel and the contracting officer.

(g) Matters for clearance with the contracting officer. The Litigation Division is charged with the responsibility for defending the DoN's case before the ASBCA as contained in the contracting officer's final decision. If, during the processing of an appeal, the Litigation Division Trial Attorney considers that any aspect of the DoN's case, as set forth in the final decision, should be abandoned or substantially modified, the Litigation Division Trial Attorney shall obtain the concurrence of the contracting officer before entering into any stipulation, consent, or other action or disposition with respect to such issue in the appeals deliberations.

(h) Settlement negotiations pending appeal. The conduct of settlement negotiations in connection with any pending appeal should generally be accomplished by a selected team consisting of the trial attorney and representatives of the contracting officer (including contracting activity technical personnel, counsel, negotiator, and auditor if necessary). Other arrangements may be made in specific cases as appropriate. However, no final settlement agreement will be made without the written approval of the contracting officer. When a settlement is made, a memorandum shall be prepared by the negotiating team (and signed by all team members) stating the basis and reasons therefor. The settlement agreement shall be drafted by the contracting activity and trial attorney. The trial attorney shall file any legal papers required to be filed with the ASBCA to effect disposition of the case by mutual agreement of the parties.

(i) Appeals case remanded to DoN. In some instances, the ASBCA will determine that the contractor is entitled to compensation with respect to one or more issues addressed in the contracting officer's decision. The ASBCA may then direct that the DoN re-assume responsibility of the claims case for purposes of quantum determination. In all such cases, the contracting officer shall arrange for a negotiating team to be established to reach mutual agreement with the contractor with respect to such issue(s). Since the case no longer is considered a pending appeal, the attorney for the negotiating team shall be appointed by the appropriate contracting activity counsel. No final settlement agreement shall be made without the approval of the contracting officer.

(j) Review and approval. Negotiated settlements of appeals, pending before the ASBCA, as well as negotiated settlements of appeal issues which have been remanded to the DoN for quantum determination, will be subject to review and approval in accordance with the claims dollar threshold criteria shown in [Table 5233-91](#) .

(k) Contract modification. Whenever contract modification and other contract documents are required to implement a settlement of ASBCA or appellate court decision, they should reference the ASBCA proceedings by title and docket number.

PART 5234
MAJOR SYSTEM ACQUISITION

5234.004 Acquisition strategy.

If the acquisition strategy contemplates the use of an option for initial production requirements in a competitively or noncompetitively awarded Engineering and Manufacturing Development (EMD) contract, address the use of the Phased Pricing technique described in 5216.403-2.

PART 5235

RESEARCH AND DEVELOPMENT CONTRACTING

5235.006 (DFARS 235.006) Contracting methods and contract type.

(b) (i), (ii) and (iii). Notifications and requests for USD(A) approval are to be submitted to APIA for processing and signature by ASN(RD&A).

5235.015 (DFARS 235.015) Contracts for research with educational institutions and nonprofit organizations.

5235.015-70 (DFARS 235.015-70) Special use allowances for research facilities acquired by educational institutions.

(c) Authorization of special use allowance. In addition, the HCA should also consider if more than the amount of percentage of cost needed to satisfy the Government's functional requirements is recommended for special use allowance, the special circumstances justifying such action. Requests for HCA approval shall be forwarded via Commander, Naval Facilities Engineering Command for review and comment in regard to design, type of construction, adequacy to meet Government requirements and the reasonableness of the estimated total cost and the amount thereof allocable to Government requirements.

(d) Application of the special use allowance.

(S-90) Contracts providing for a special use allowance for acquisitions or construction of research facilities shall specify:

(i) that plans and specifications and major changes thereto shall be subject to approval by the Government;

(ii) that the work shall be subject to approval by the Government for conformity to approved plans and specifications; and

(iii) that the NAVFACENGCOM shall be the authorized representative of the sponsoring contracting activity for such purposes.

(S-91) Except as otherwise directed or authorized in the approval, the contract may also provide for up to a 15% increase in the amount subject to the special use allowance to cover changes in the work or any difference between estimated and actual cost of the work. Any such increase may be made subject to the approval of the sponsoring contracting activity. If more than a 15% increase is required, the further approval of the HCA or designee is required.

5235.070 (DFARS 235.070) Indemnification against unusually hazardous risks.

5235.070-1 (DFARS 235.070-1) Indemnification under research and development contracts.

(a) The authority to approve the inclusion of the appropriate DFARS contract clause (252.235-7000 for fixed price and 252.235-7001 for cost reimbursement) and definition in a research or development contract, together with the authority to approve the amount of any payment under 10 U.S.C. 2354(c) is delegated to APIA-PP. The authority to approve the source of the funds out of which any such payment is made is delegated to the Deputy Comptroller, Department of the Navy, and to one assistant designated by the Deputy Comptroller for such purpose.

PART 5236 (DFARS 236)
CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

SUBPART 5236.2 (DFARS 236.2)

--SPECIAL ASPECTS OF CONTRACTING FOR CONSTRUCTION

5236.270 (DFARS 236.270) *Expediting construction contracts.*

Where additional costs are incurred, NAVFACENGCOM is responsible for obtaining required agency head approval and certification.

5236.271 (DFARS 236.271) *Cost-Plus-Fixed Fee Contracts.*

Submit requests for use of cost-plus-fixed-fee construction contracts which require ASD(P&L) approval to APIA-PP via the HCA.

SUBPART 5236.6 (DFARS 236.6--ARCHITECT-ENGINEER SERVICES

5236.601 (DFARS 236.601) *Policy.*

- (1) NAVFACENGCOM is responsible for any required Congressional notification.

PART 5237

SERVICE CONTRACTING

SUBPART 5237.1--SERVICE CONTRACTS--GENERAL

5237.102 (DFARS 237.102) Policy.

The use of uncompensated overtime is not encouraged. Similarly, the acquisition of services on the basis of the number of hours to be provided is not encouraged since it promotes uncompensated overtime and often results in unsatisfactory contract performance and/or contract administration problems. Accordingly, solicitations for services expected to exceed \$100,000 which are based on the number of hours to be provided shall not be issued unless approved in advance by the CCO or designee.

5237.103 Contracting officer responsibility.

5237.103-90 Marking of contractor reports.

All reports required under contracts for individual experts and consultants; studies, analyses, and evaluations; and management and professional support services shall prominently show on the cover of the report:

- (a) Name and business address of the contractor;
- (b) Contract number;
- (c) Contract dollar amount;
- (d) Whether the contract was competitively or non-competitively awarded; and
- (e) Sponsor:

Name of Individual Sponsor

Name of Requiring Activity

City and State

The sponsor's name shall be provided by the contracting activity and shall be an individual from the requiring activity at the Program Manager or comparable level.

SUBPART 5237.2--ADVISORY AND ASSISTANCE SERVICES

5237.202 Policy.

(a) Additional policies and procedures for acquiring advisory and assistance services by contract are prescribed in DoD Directive 4205.2 dated 27 January 1986 and SECNAVINST 4200.31B dated 8 September 1987.

5237.203 (DFARS 237.203) Types of advisory and assistance services.

(a) Individual experts and consultants. Procedures governing the procurement of individual experts and consultants are set forth in the Federal Personnel Manual (CMMI), (Chapter 304 and Appendix C of the chapter) and FAR Subpart 37.2. In the case of contracts where personal services are not involved there is no requirement to

invoke the exceptional authority of 5 U.S.C. 3109 even though consulting services are utilized. Accordingly, 5 U.S.C. 3109 should not be used as authority for such contracts.

5237.270 (DFARS 237.270) Master agreements.

5237.270-3 Limitations.

(a) The determination and finding shall be completed as prescribed in FAR 1.704 and DFARS 201.704. Upon signature, provide a copy to APIA-PP.

(b) HCAs are responsible for publication of the notice of waiver in the Federal Register. All notices shall be forwarded to the Office of the Federal Register via the Navy Judge Advocate General (Code 133) (see 5201-90).

5237.270-4 Reporting requirements.

(a) Submit the annual report to APIA-PP not later than 29 October.

(a) (3) Reports shall cover the preceding fiscal year.

(b) APIA-PP will centrally maintain the information required by (1) through (5) which shall be provided with the annual report required under (a) above.

SUBPART 5237.90--CONTRACTOR GUARD SERVICES

5237.9000 Contracting for contractor guard services.

(a) Policy. (1) All requirements for contractor guard services, with the exception of those required to be obtained through the General Services Administration (GSA), will be obtained through NAVFACENGCOM.

(2) As a minimum, the joint Navy Security and Investigative Command/Facilities Engineering Command 1986 Guard Services Contract Performance Work Statement will be utilized as the applicable statement of requirements.

PART 5239 (DFARS 239)
ACQUISITION OF INFORMATION RESOURCES

5239.001 Policy.

5239.001-70 (DFARS 239.001-70) Warner Amendment exemptions for Federal information processing (FIP) resources.

(c) Determinations of applicability of the Warner Amendment shall be processed and made in accordance with SECNAVINST 5231.1.

5239.002 (DFARS 239.002) Delegations of procurement authority.

(1) Requests for delegation of procurement authority shall be processed in accordance with SECNAVINST 5231.1.

PART 5241

ACQUISITION OF UTILITY SERVICES

5241.004 (DFARS 241.004) Acquiring utility services.

(a) The Commander, Naval Facilities Engineering Command has cognizance over all matters pertaining to Navy acquisition of public utility services including, but not limited to, electricity, gas, water, sewerage, drainage, fire and police protection, street lighting and cleaning, and trash and garbage disposal. Acquisition of telecommunication services is under the cognizance of the Commanding Officer, Information Technology Acquisition Center (ITAC).

(b) Authority to contract for public utility services shall be obtained by Business Clearance Memorandum from NAVFACENGCOM in such form as they may prescribe. Business Clearance Memorandum shall set forth the following information:

- (1) Name and location of activity;
- (2) Type of public utility service required;
- (3) Estimated annual cost and, if available, a billing analysis for the preceding twelve (12) months showing usage and cost factors;
- (4) Name and address of contractor;
- (5) Copy of contractor's rates, rules, and regulations applicable to the service in question;
- (6) A statement concerning the availability of competition;
- (7) The chargeable appropriation; and
- (8) Such other data pertaining to each type of public utility service as may be prescribed, from time to time, by NAVFACENGCOM.

(c) All contracts shall be approved as to legality and form by NAVFACENGCOM Counsel.

(d) Contracts for the operation of Government-owned facilities by a DON contractor which call for reimbursement of the contractor's utility expense shall specifically provide for the submission of utility subcontracts to the NAVFACENGCOM for comment or approval prior to execution of the contract.

(e) NAVFACENGCOM is authorized to procure unregulated public utility services without written contract where the anticipated annual charges will not exceed \$2,500 and regulated public utility services without written contract where the anticipated annual charge will not exceed \$10,000 and where a connection or termination charge does not exceed \$1,000 or \$2,500, respectively. In all instances where utility services are procured without the use of a written contract, payment therefore will be made on the basis of monthly statements submitted in conformity with applicable regulations.

PART 5242

CONTRACT ADMINISTRATION

SUBPART 5242.1--INTERAGENCY CONTRACT ADMINISTRATION AND AUDIT SERVICES

5242.101 Policy.

(d) DoN Field Contract Administration Offices will invoice for contract administration services completed in accordance with instructions provided by their parent command. Billing rates will be provided by the Comptroller of the Navy in accordance with NAVCOMPTINST 7030.17.

5242.190 Relationships - DCAA and contracting/contract administration offices.

(a) Organizationally, the DCAA is separate from, and independent of, contracting and contract administration offices. Audit reports and other services provided by DCAA are advisory and, as such, will be responsive to the needs of contracting and contract administration offices and will be consistent with specific contract provisions and applicable regulations.

(b) Areas of interest to the auditor often meet and overlap those of interest to contracting and contract administration offices. A clear understanding of the responsibilities of DCAA auditors is essential to ensure continuous close cooperation and team work.

(c) Contracting and contract administration offices have responsibility for:

- (1) Requesting contract audit service deemed essential for the procurement;
- (2) Providing maximum allowable time for the conduct of audits;
- (3) Furnishing the auditor, in connection with a request for audit, copies of any contracts (including change orders, supplements, amendments, and termination notices), cost statements, proposals, and other financial data submitted by contractors or, as appropriate, requested by the auditor;
- (4) Establishing access to contractor records required by auditors; and
- (5) Furnishing such other information, data, or technical service as may be required (such as the advice of industrial engineers on cost matters, copies of pricing memoranda, etc.) or otherwise may be useful in performing the audit.

(d) Contract audit services shall be requested by contracting and contract administration offices when necessary in connection with:

- (1) Development of procurement packages prior to solicitation;
- (2) Pre-award surveys;
- (3) Pricing contracting actions;
- (4) Functional reviews of contractor performance;
- (5) Progress payments, and;
- (6) Contract terminations.

(e) Contract audit services are performed automatically in connection with:

- (1) Reimbursement of costs, and;
- (2) Problems and unsatisfactory conditions encountered by the auditor and within his purview.

(f) The independent professional advice of DCAA auditors is essential to good contracting. The contracting and contract administration offices must consider such advice. However, decisions of the contracting officer on contracting and contract administration matters often have to take into account many factors in addition to those presented by the auditors and will therefore represent the considered judgment of the contracting officer. (see FAR 15.805-1(a)).

(g) The auditor is required to discuss all significant and potentially controversial problems, particularly those having a continuing impact on the reasonableness of pricing or on administration of the acquisition program with the ACO prior to finalization of audit action. Where agreement on such problems cannot be arrived at locally, the matter should be elevated through the respective audit and contract administration chain of command for final resolution. Any other unresolvable disagreements concerning services provided by DCAA shall be referred to higher contracting authority for discussion and resolution with counterpart DCAA echelons.

5242.191 Audit resolution and disposition.

(a) DoN Policy. DoN contracting activities shall use contract audit advice provided by the DCAA. This entails:

- (1) full consideration of the findings and recommendations made by auditors;
- (2) prompt, proper resolution of differences between contracting officers and contract auditors on the proposed disposition of audit findings and recommendations;
- (3) expeditious disposition, including fund recovery actions;
- (4) documentation of any differences between the audit recommendation and the actual dispositions thereof; and
- (5) continuous dialogue between contracting, auditing and audit follow-up personnel to achieve the most effective system possible.

(b) System structure. The contract audit follow-up system shall be structured in consonance with the independent decision making role of the contracting officer and the financial advisory role of the contract auditor. Resolution of contract audit reports other than preawards, is required by law within six months of report issuance. Disposition shall take place as soon as possible after resolution.

(c) Responsibilities.

(1) APIA-PP is the contract audit follow-up official responsible for managing the DoN's contract audit follow-up program.

(2) HCAs shall:

(i) establish procedures as prescribed by FAR 15.807, whereby contracting officers shall fully consider contract audit advice in the course of determining prenegotiation positions that are subject to DoD Component review and clearance processes.

(ii) establish internal controls to ensure that the Command contract audit followup system is fully implemented in accordance with the requirements of DoD Directive 7640.2 dated 12 February 1988, and that system operation results in timely and appropriate resolution and disposition of audit reports.

(iii) ensure that performance appraisals of appropriate acquisition officials reflect their effectiveness in resolving and disposing of audit findings and recommendations in a timely manner, while fully protecting the Government's interest.

(iv) establish procedures for maintenance of up-to-date records on all applicable contract audit reports from receipt through disposition. For open reports ,this includes written milestone plans comprised of target dates for resolution and disposition, and planned actions to accomplish those dates. When an audit is resolved, it must be supported by specific written documentation in the file.

(v) establish procedures to monitor and ensure the proper, timely resolution and disposition of contract audit reports.

(vi) establish procedures to ensure that the semiannual contract audit follow-up status report submission is:

(A) prepared in accordance with DoD Directive 7640.2 dated 12 February 1988, paragraph F.3., and enclosure 3.

(B) verified against prior status report submission and the applicable DCAA control logs; and

(C) submitted to APIA-PP within 15 calendar days after the end of the 31 March and 30 September reporting periods. APIA-PP will accumulate the reports and submit the consolidated DoN report to the DODIG within 30 calendar days after the end of the reporting period.

(vii) ensure that acquisition personnel are adequately trained in the utilization of contract audit reports and the requirements of the contract audit follow-up program.

(viii) establish procedures for documenting and reviewing:

(A) proposed prenegotiation objectives which provide the independent review for internal control purposes. This will be accomplished as part of the business clearance review and approval process. In documenting the prenegotiation position, the contracting officer should indicate whether the audit recommendations were accepted or, if not, whether the auditor has revised them. When the contracting officer disagrees with the audit position, the contracting officer's prenegotiation documentation should include the rationale for not accepting the audit advice. The postnegotiation documentation should include a summary of the field pricing report recommendations and reasons for any pertinent variances from these recommendations.

(B) objections from the contractor to the administrative contracting officer (ACO) for auditor-determined indirect cost rates. This will be accomplished as part of the business clearance review and approval process. If the contractor submits a written objection to the ACO, the ACO may communicate further with the contractor in order to reach an agreement. If the ACO disagrees with the audit recommendations, he or she shall comply with the business clearance procedures for documentation and review prior to disposition. If the ACO agrees with the audit recommendations, he or she shall issue a final decision, after complying with the clearance review and approval procedures.

5242.192 Commercial advertising by DoN contractors.

(a) Contractors frequently include in some of their commercial advertisements reference to their participation in DoN programs. Prior to placement of these advertisements, the contractor may seek approval thereof from some DoN office. The general DoN policy is to not object to such advertisements provided they do not:

- (1) Directly or indirectly constitute an endorsement by the Department or any member thereof of the contractor's product or service;
- (2) Indicate or imply in any manner Departmental preference of the contractor;
- (3) Contain reference to contract number or other contractual detail; or
- (4) Disclose classified military information.

(b) Contractors are not required to obtain prior clearance for advertisements. However, any Departmental office that becomes aware of any advertisement which appears to conflict with the conditions of (a) above shall immediately bring it to the attention of the cognizant field contract administration office. The field office shall take necessary action with the contractor to resolve the matter in consonance with the aforesaid policy. In the event this matter cannot be resolved to the satisfaction of the field office, the matter shall be referred to APIA-PP.

SUBPART 5242.2--ASSIGNMENT OF CONTRACT ADMINISTRATION

5242.205 Designation of the paying office.

All contracts, agreements and orders citing DoN appropriations and funds paid by DoN disbursing offices will show the appropriate Financial Information Processing Centers (FIPCs)/Financial Processing Centers (FPCs).

SUBPART 5242.3--CONTRACT ADMINISTRATION OFFICE FUNCTIONS

5242.302 (DFARS 242.302) Contract administration functions.

(b) (4) Subject to the limitations prescribed in (B) below, the CAO is hereby delegated authority to execute contract modifications providing for the deobligation of unexpended dollar balances considered excess to known contract requirements in those applicable DoN contracts assigned for administration. The ACO shall execute a bilateral contract modification reducing the dollar balance of the contract when it is determined that excess funds are available for deobligation. If more than one appropriation is involved, the excess amount for each appropriation shall be identified. The ACO is authorized to include statements of funding contingencies reserved by either party for further Government obligation and to affect a net reduction of the dollar balance of obligated DoN funds.

(B) Limitations. This delegation does not apply to that portion of:

- (1) DoN cost reimbursement contracts where DoN funds are involved; and
- (2) DoN fixed-price contracts where DoN funds are obligated or committed pursuant to provisioning procedures, or where DoN funds for engineering services and related support are involved.

5242.302-90 Responsibilities of Supervisors of Shipbuilding, Conversion, and Repair (SUPSHIPS).

(a) Policy. The following policy, applicable to DoN field contract administration of major defense system acquisitions, is based upon the premise that the contractor is primarily responsible for the contractor's cost, schedule, and technical performance;

(1) A capability shall be established and maintained in the SUPSHIPS to provide the required support to the contracting officer, program manager and contracting activity.

(2) Maximum responsibility, within existing capability, shall be assigned to the SUPSHIP by the contracting officer, program manager, and/or contracting office. Appropriate agreements shall be formalized which clearly define for each program assigned to a SUPSHIP the detailed responsibility of the SUPSHIP.

(3) The basic method of operation of the SUPSHIP shall be the monitoring of the contractor's performance, including management and operations. Emphasis shall be placed on ensuring that contractors incorporate controls to ensure that the contract requirements are met.

(4) SUPSHIPS shall coordinate their contract administration efforts with those of the DCAA (Defense Contract Audit Agency) auditor and other government activities. Functional area reviews conducted by the DCAA auditor and those conducted by the SUPSHIP shall be coordinated in order to optimize use of audit and Government contract administration manpower with minimum disruptive effort upon the contractor. For purposes of final indirect cost rates, (see DFARS 242.705).

(5) The goal of SUPSHIPS shall be, through involvement with the contractor, earliest detection and correction of contractor inefficiencies; cost avoidance rather than disallowance; and compliance with contractual schedule and technical performance requirements.

(6) Contract administration personnel shall be fully cognizant of contract terms and conditions in order to avoid actions which exceed contract requirements and to assure that any directions, suggestions or requests to the contractor are consistent with the contract provisions.

(7) Contract administration procedures shall be tailored to the contract and contractor situations. The degree of monitoring exercised by the SUPSHIP shall be consistent with the benefits to be derived. The art of the field contract administrator is the ability to determine and to use the minimum amount of monitoring required to protect the Government's interests.

(b) Primary Responsibilities. SUPSHIPS have the primary responsibilities listed below which require the integrated performance of the functions listed in FAR 42.302(a), and the assistance of the DCAA auditor:

(1) Determine on a continuing basis contractor compliance with the terms of the contract including schedule, cost and technical performance requirements;

(i) Advise the contractor of the need for corrective action and follow-up to obtain correction;

(ii) Advise, as appropriate, the contracting officer, project manager, ordering activity, and/or other responsible official or activity of any contractor deficiencies which the SUPSHIP cannot resolve within the limits of delegated authority; and

(iii) Consult with the contracting officer in the event of conflict or disagreement;

(2) Advise, as appropriate, the contracting officer, project manager, ordering activity, and/or other responsible official or activity of any problem not covered by contract terms affecting the adequacy of the end item or the contractor's cost, schedule or technical performance which the SUPSHIP cannot resolve within the limits of delegated authority.

(3) Advise the contracting officer of any inadequacies in contract terms, including schedule, cost and technical performance requirements, revealed during the performance of contract administration functions; and

(4) Determine whether the contractor's direct and indirect costs are reasonable, allocable and otherwise allowable, that costs represent what performance of the contractor should cost, assuming reasonable economy and efficiency; and take appropriate corrective action when necessary.

(c) Additional functions. The functions listed below are in addition to those listed in FAR 42.302(a) and shall be performed when requested by the contracting officer, project manager or ordering activity.

(1) Conduct pre-solicitation review and evaluation of the schedule, general provisions, specifications and other provisions of proposed contracts to determine the adequacy of contractual requirements for contract administration purposes.

(2) Participate in negotiations and in source selections.

(3) Issue orders under contracts for provisioned and other items, and orders under basic ordering agreements.

(4) Participate in cost and other studies conducted by higher authority.

(5) Perform warranty administration. Include, as a minimum, collection of the following data for each contract:

- (i) Item description;
- (ii) Applicable contract number;
- (iii) Contractor name and location;
- (iv) Dollar value of item under warranty;
- (v) Scope of the warranty (i.e., what is warranted, what is not) and identification of the warranty provisions (clause numbers) in the contract;
- (vi) Warranty item repair history, including nature of repairs, cost and frequency; and
- (vii) Government costs chargeable to the contractor, e.g., repair, rework, modification, reprocurement and transportation costs.

(d) Contractor employee compensation and insurance/pension reviews (see DFARS 242.73). (1) SUPSHIPS are responsible for determining the final allowability of contractor costs, including costs for contractor employee compensation, insurance and pensions. As part of the effort necessary to make determinations applicable to employee compensation, insurance and pension costs, SUPSHIPS may use the services of the DCAA to conduct employee compensation reviews and the cognizant DCMAO (Defense Contract Management Area Operation) to conduct insurance/pension reviews required by FAR 42.302(a) (1) and (2).

(2) A copy of each review shall be provided the cognizant Systems Command and APIA-PP by the SUPSHIP.

(3) Requests for DCMAO services should be confirmed in writing to Defense Logistics Agency (DLA-AF). A copy should be sent to APIA-PP and the systems Command manager of the SUPSHIP.

(e) Deobligation of unexpended excess dollar balances.

(1) Responsibility. SUPSHIPS shall monitor contract funding in order to determine when excess funds are available for deobligation.

(2) Procedures. (i) Contractually required reports, including Contract Funds Status Report (DD Form 1586) and the report required by the Limitation of Cost clauses, shall be examined to determine if there are excess contract funds. Also, when work under a contract or contract line item is physically completed, or has lapsed, a review shall be made to determine if there are any excess funds.

(ii) When the determination has been made that unexpended dollar balances are excess to known contract requirements, the SUPSHIP shall obtain a statement from the contractor as to the exact amount available for deobligation.

(iii) When authorized under 5242.302(b) (4), the SUPSHIP will execute a bilateral contract modification releasing excess funds. Otherwise, the SUPSHIP shall provide a report of excess funds to the contracting office, which may either modify the contract or authorize the SUPSHIP to do so.

(iv) In preparing modifications deobligating funds under contracts involving multiple accounting classifications, SUPSHIPS may find it necessary to obtain a record of DoN payments by accounting classifications in order to determine which accounting classifications to credit. Upon specific request, contract payment status may be secured from the paying office(s) designated in the contract to make payments under the various appropriations. The payment office will provide payment status by Accounting Classification Reference Number (ACRN) as identified in the contract. Extreme caution must be exercised to avoid deobligating expired funds which may not be truly excess funds.

(v) Should a deobligation by a SUPSHIP be later determined to have been excessive, the SUPSHIP shall obtain the required funds from or through the contracting office and modify the contract accordingly.

(f) Review of contractor's automatic data processing (ADP) operations.

(1) SUPSHIP Responsibility. Each SUPSHIP shall review the contractors' ADP operations periodically to ensure that they are effective and economical. This review should be combined with any review required by the Federal Information Management Resources Regulation (FIRMR) or DFARS 239.7303 and shall include a review of the end products of contractors' ADP equipment, and the data that might be produced by such equipment. The plan and schedule for the review must be tailored to the contractor concerned, the extent of competition in contracts being performed, the contractor's operating methods, the nature of the work being done, contracting cycle status, types of contracts involved, degree of technical and financial risk, ratio of Government/commercial work, and extent that performance efficiencies have been previously demonstrated. The plan should stress the importance of anticipating potential problems and provide a means of calling them to the attention of the contractor at a stage early enough to enable preventive action to be taken. Review teams shall be headed by a representative of the SUPSHIP and shall include as necessary one or more ADPE specialists, one or more DCAA auditors, and appropriate SUPSHIP personnel.

(2) The Defense Logistics Agency has been designated lead agency responsibility by the Under Secretary of Defense to conduct ADP technical reviews for the Departments of the Army and Navy. Defense Contract Management District (DCMD) Northeast and DCMD West will perform ADP technical reviews in accordance with FAR 31.205-2 and DFARS 239.73. DCMD West is responsible for performing ADP technical reviews for contractors located west of the Mississippi River, plus southern Illinois. DCMD Northeast is responsible for reviews at all other locations. Any assistance will be requested in writing directly from DCMD Northeast, Attn: DCMD BOS-AFE, 495 Summer Street, Boston, MA 02210-2184; or DCMD West, Attn: DCMD LA-AFE, 222 N. Sepulveda Blvd., El Segundo, CA 90245-4320. The request shall state whether the contractor is expected to exceed the FAR 31.205-2 threshold.

(g) Administration of payment provisions.

(1) Submission of quarterly statements. The SUPSHIP is responsible for maintaining controls for the purpose of ensuring that contractors submit the quarterly statements required by paragraph (h) of the clause at FAR 52.216-5, Price Redetermination-Prospective; paragraph (g) of the clause at FAR 52.216-6, Price Redetermination-Retroactive; paragraph (g) of the clause at FAR 52.216-16, Incentive Price Revision-Firm Target; and paragraph (i) of the clause at FAR 52.216-17, Incentive Price Revision--Successive Targets, to the contracting officer with a copy to the designated paying activity/activities. If the contractor fails to submit the statement, the SUPSHIP shall notify the contracting officer, the designated paying activity/activities and the cognizant DCAA contract auditor of the delay and the reasons therefor. Payments shall be suspended by the paying activity/activities if the statement is not submitted when due.

(2) Review of quarterly statements. (i) Unless the SUPSHIP or auditor has cause to doubt or question the accuracy of statements furnished in accordance with the limitation on payments provisions, such statements shall ordinarily be relied upon, and prompt payments under the contract shall be made pending review. Arrangements shall be made by the SUPSHIP for periodic joint reviews with the auditor of the quarterly statements. The frequency and scope of such reviews shall be dependent on the dollar amounts involved and the extent of any indicated divergence between interim billing prices and the actual cost of delivered items. At least one comprehensive review shall be made annually. Among other things, review procedures shall establish that costs attributed to delivered items have been excluded from the costs set forth as the basis for unliquidated progress payments on Contractor's Request for Progress Payment (SF Form 1443).

(ii) In certain cases, the SUPSHIP may have reason to question the accuracy of statements furnished in accordance with the limitation on payment provisions and the amounts involved may be significant. Unless the contractor provides a satisfactory explanation of correction, together with any indicated refund, the SUPSHIP should notify the paying activity/activities to withhold payments under the contract in an amount deemed sufficient to cover additional refunds that would have resulted from correct quarterly statements.

(3) Refunds and adjustments.

(i) Ascertainment and collections. The amount of any monies due from contractors to the Government shall be ascertained promptly and collected expeditiously. The SUPSHIP shall establish appropriate controls to expedite prompt collection. Any necessary supplemental agreements to provide for refunds or adjustments shall be prepared expeditiously and executed without delay.

(ii) Voluntary refunds or payment adjustments. The making of voluntary refunds by the contractor in anticipation of retroactive price reductions shall be encouraged. No proposed voluntary refund shall be refused or delayed, and all such refunds shall be accepted without prejudice to final pricing.

(iii) Billing or interim price adjustments. Where it is apparent that the interim contract prices are and will continue to be excessive, the SUPSHIP shall recommend to the contracting officer that billing prices covering future deliveries be modified. However, if reductions in billing prices are proposed by the contractor, they shall be made effective immediately without prejudice to further adjustments. Similarly, mutually agreed billing prices shall be made effective immediately. Billing voluntarily reduced by contractors shall, if otherwise proper, be paid at the reduced amounts without awaiting contract modification.

(iv) Refunds or payment adjustments - final pricing proposal. Where the contractor's price proposal under price redetermination or incentive contracts indicates that a significant refund will be due, the SUPSHIP shall promptly secure an appropriate voluntary or mutually acceptable refund from the contractor.

(v) Supporting documentation for refunds and adjustments. In connection with voluntary refunds; minimum refunds proposed by contractors in connection with final pricing proposals; and refunds incident to quarterly statements; contractors shall not be required to furnish concurrent itemization of adjustments to be made on past billings, nor to furnish adjusted bills concurrently. The making, acceptance, and deposit of refunds will not be delayed pending any necessary accounting adjustments.

(h) Allowability of costs under cost-reimbursement type contracts.

(1) The cognizant SUPSHIPS has final responsibility for determining whether costs incurred under cost-reimbursement type contracts are reasonable, allocable, and otherwise allowable.

(2) (DFARS 242.803(b) designates the auditor as the authorized representative of the contracting officer for examining contract costs for the purpose of determining allowable direct and indirect costs under certain circumstances. During performance of the contract, the auditor processes vouchers for provisional payment subject to final audit. At completion of the contract, the auditor forwards the completion voucher to the SUPSHIP accompanied by the final audit report and determination of all costs incurred and considered allowable from the inception to the completion of the contract. The SUPSHIP shall approve the final payment after ensuring that the contractor has fully complied with all provisions of the contract.

(3) The auditor issues DCAA Form 1, Notice of Contract Costs Suspended and/or Disapproved, with a copy to the SUPSHIP, with respect to cost claimed but not considered allowable. The auditor is required to discuss controversial disallowances with the SUPSHIP, prior to issuing the DCAA Form 1.

(4) During the period of contract performance, the SUPSHIP is responsible for the performance of contract administration functions listed in FAR 42.302. In the day-to-day performance of these functions, SUPSHIP personnel should be alert to inefficient and uneconomical policies and practices being followed by the contractor that can result in the incurrence of unnecessary costs. If sufficient information is available to indicate that a contractor's practice is causing unnecessary contract costs, the SUPSHIP shall direct the issuance of the DCAA Form 1 by the auditor for the suspension or disapproval of costs incurred. Where the SUPSHIP believes that

unnecessary costs are being incurred by a contractor, and requires audit assistance, available information should be coordinated with the auditor, and the SUPSHIP should request specific audit coverage of the functional area involved.

(i) Responsibility of a CAO to its parent agency. (1) The Contract Administration Office (CAO) shall perform all assigned contract administration functions listed in FAR 42.302(a) to the fullest extent of its capabilities and refer functions beyond its capability to its parent headquarters for performance.

(2) When feasible, the CAO shall perform such other contract administration functions listed in FAR 42.302(b) as may be requested by the contracting office. If resources are not available to perform such functions, the CAO shall so advise its parent headquarters and the contracting office making the request.

(j) Responsibility of SUPSHIPS to project manager or contracting activity.

(1) Appropriate agreements shall be reached among the project manager or contracting activity and the applicable SUPSHIP with respect to the functions of each relative to major defense system contract where the SUPSHIP is to perform functions not listed in FAR 42.302(a). Those functions normally performed by SUPSHIPS, as listed in FAR 42.302(a), shall not be included in the agreement unless withheld, supplemented, modified or clarified.

(2) The objective of the agreement is to establish a clear understanding as to which Government element is responsible for administering specific aspects of the contract. The existence of a clear understanding will minimize the possibility that duplication may occur or that a responsible element may be circumvented in providing Government direction to the contractor. Within the capability of SUPSHIPS, program managers or contracting activities shall delegate maximum authority to them to perform such functions as participation in preliminary design reviews and critical design reviews, surveillance and monitoring of development risk, standardization control, interface control, approving contract changes, trade-off studies, approval of certain Class I engineering changes, approval of specifications, etc. These functions should be included in the agreements.

(3) The guidance in (1) and (2) above is also applicable for use, as appropriate, with non-DoN CAOs.

(k) Headquarters Management of DoN Field Contract Administration Offices. It is DoN policy to locate management of its SUPSHIPS in physical as well as organizational proximity to the project managers, Systems Commanders and functional specialists being serviced. This policy enables all responsible acquisition officials to more quickly and effectively coordinate and focus their efforts on problems encountered throughout the acquisition cycle from program initiation to production. Further, the physical and organizational co-location of these officials enhances the opportunity for the direct communications and rapid responses necessary to the daily management of major weapons systems acquisitions. The concerted team effort encouraged by this policy is considered to be a major factor in ensuring that all activity in the entire acquisition arena is oriented toward program success.

(l) Advance agreements on treatment of special or unusual costs. The SUPSHIPS are responsible for negotiating certain advance agreements as anticipated by 5231.109 and FAR 31.109 except that the Tri-Service Contracting Officer has full authority to negotiate advance agreements for IR&D/B&P costs pursuant to FAR 31.205-18 and FAR Subpart 42.10. In exercising this responsibility, contracting officers shall comply with the requirements set forth in 5201.690-6.

(m) Final indirect cost rates. The SUPSHIPS are responsible for establishing final indirect cost rates for contractor locations for which such rates are established in accordance with the provisions of FAR 42.705.

(n) Cost Accounting Standards reviews. The SUPSHIP are responsible for determining contractor compliance with cost accounting standards (CAS) and disclosure statements, as applicable, and for negotiating equitable adjustments and executing

supplemental agreements pursuant to cost accounting standard clauses in FAR 52.230-3, 52.230-4 and 52.230-5 except that the Tri-Service Contracting Officer shall have full authority for determinations related to CAS 420 for those contractors with which Tri-Service Contracting Officer negotiates advance agreements pursuant to FAR 31.205-18 and FAR Subpart 42.10.

5242.302-91 Contract actions based on direct communications between the CAO and the requiring activity.

(a) In the interest of expediting contractual decisions, contracting officers of the Navy Field Contracting System may delegate to DoN and DCMAO contract administration offices (CAOs) authority to communicate directly with the requiring activity on problems related to a contract. The name and address of the requiring activity and the name and telephone number of the person to be contacted shall be included in the delegation of authority. When so delegated, the CAO will take any required action to solve the problem, except those actions which, by regulation, must be taken by a contracting officer of the contracting activity.

(b) Normally when direct communication with the requiring activity is authorized in accordance with (a) above, the DoN or DCMAO CAO shall also be delegated authority to perform, as appropriate, the functions under FAR 42.302(b).

(c) Copies of communications among requiring activities and CAOs shall be furnished the contracting officer of the contracting activity, as appropriate.

SUBPART 5242.6--CORPORATE ADMINISTRATIVE CONTRACTING OFFICER

5242.602 Assignment and location.

(c) Recommendations for assignment of a corporate administrative contracting officer (CACO) shall be submitted to APIA-PP via appropriate channels.

SUBPART 5242.10--NEGOTIATING ADVANCE AGREEMENTS FOR INDEPENDENT RESEARCH AND DEVELOPMENT/BID AND

5242.1003 Designation of lead negotiation agency.

The Chief of Naval Research (CNR) is responsible for performing the functions set forth at FAR 42.1005, 42.1006 and 42.1007.

5242.1008 (DFARS 242.1008) Administrative appeals.

(a) The Navy IR&D/B&P Appeals Hearing Group is the designated Navy's administrative appeals hearing group. The Hearing Group may establish such additional procedures for processing appeals as are consistent with FAR 42.1008.

(b) Contracting Officer decisions made to reduce independent research and development (IR&D) and bid and proposal (B&P) payments shall include notification to the contractor of the right to appeal to the Hearing Group. Notices of intent to appeal shall be addressed to the Hearing Group, and shall be submitted to the CNR by the contractor within 30 days after receipt of the contracting officer's decision. The CNR shall forward the contractor's appeal and such additional documents and information as the contractor may submit, together with the contractor's position thereon and such other information as the contractor deems pertinent, to the Chairperson of the Hearing Group.

SUBPART 5242.14--TRAFFIC AND TRANSPORTATION MANAGEMENT

5242.1403 Shipping documents covering f.o.b. origin shipments.

5242.1403-2 Contractor-prepaid commercial bills of lading.

(a) When supplies to be delivered FOB origin are authorized to be shipped on prepaid commercial bills of lading, reimbursement of contractors' prepay and add (PP&A) transportation costs shall not be charged to DoN procurement appropriations. Contracts and purchase orders shall specify that the cognizant paying office will charge the prepaid transportation costs to the following accounting data:

17X3980.2379-022-74001-0-063408-2D-000-****-98003

****Insert appropriate four-digit Transportation Account Code (TAC) based upon procuring appropriation financing purchase, i.e.,

Procurement Account	TAC
17-1506 Aircraft Procurement Navy	N837
17-1507 Weapons Procurement Navy	N839
17-1611 Shipbuilding and Conversion Navy	N844
17-1810 Other Procurement Navy	N846
17-1804 Operations and Maintenance Navy	N867
17-1806 Operations and Maintenance	
Naval Reserve	N888

SUBPART 5242.71 (DFARS 242.71) VOLUNTARY REFUNDS

5242.7101 (DFARS 242.7101) Solicited refunds.

The HCA is authorized to delegate the authority to solicit voluntary refunds to a level no lower than the CCO.

PART 5243

CONTRACT MODIFICATIONS

SUBPART 5243.1--GENERAL

5243.102 Policy.

DoN policy is to avoid the use of contract modifications for additional quantities as a means of purchasing new requirements of supplies, when such a procedure would result in prolonging the life of the contract beyond the time when final settlement would normally be made.

5243.102-90 Requests or claims for equitable adjustments

(a) Complex requests or claims for equitable adjustments pursuant to contract clauses. Circumstances may arise where a contractor's assertions involve difficult or complex legal, factual, and fiscal issues requiring extensive fact-finding and analysis of government liability. Examples include late or defective government-furnished property or information, complex delay and disruption issues under formal change orders, and formal suspensions of work or stop work orders. In such circumstances, the request or claim for equitable adjustment shall be subject to the requirements of FAR Part 33 applicable to claims. In exceptional cases separate equitable adjustments of contracts may be made for clearly identified items of costs applicable to change orders.

(b) Equitable price reduction for failure to meet contract requirements. Action shall be taken to negotiate an equitable price reduction pursuant to a guarantee clause, warranty provision, or failure to meet contract specifications, as soon as possible after the nature and extent of the deficiency has been determined, and any partially corrective action authorized by the contracting office has been completed. Delay in negotiation of such reductions to permit concurrent final pricing of the particular contract or other related contracts generally shall not be allowed.

(c) Substantiation of obsolete or residual inventory charges. Whenever a contractor submits cost data on SF 1411, Contract Pricing Proposal cover sheet, or by any alternate method, in connection with pricing of change orders or repricing of contracts, charges included therein for obsolete or excess residual inventory shall be substantiated by the submission of appropriate schedules listing the inventory involved. If title to such inventory vests in the Government, the inventory shall be treated in accordance with regulations established for contractor inventory.

5243-105 (DFARS 243.105) Availability of funds.

5243.105-90 Adjustments to prices under shipbuilding contracts.

(a) 10 U.S.C. Section 2405 prohibits the Secretary of a military department from adjusting any price under a shipbuilding contract, entered into after December 7, 1983, for an amount set forth in a claim, request for equitable adjustment, or demand for payment under the contract (or incurred due to the preparation, submission, or adjudication of any such claim, request, or demand) arising out of events occurring more than 18 months before the submission of the claim, request, or demand.

(b) 10 U.S.C. Section 2405 provides that a claim, request, or demand is submitted only when the contractor has provided to the contracting officer the certification required by Section 6(c)(1) of the Contract Disputes Act of 1978, if the matter is over \$50,000, and the supporting data for the claim, request, or demand.

(c) This subpart implements 10 U.S.C. Section 2405.

5243.105-91 Definitions.

As used in this subpart, the following terms have the meanings set forth below.

"Claim" means a written demand or written assertion by the contractor seeking, as a matter of right, a price adjustment under the contract. The theory upon which the contractor seeks the price adjustment does not determine whether a particular matter is a claim. The term includes a submission asserting any theory supporting a price adjustment, including but not limited to constructive change, breach of contract or mistake, which, if valid, would result in contractor entitlement to a price adjustment. A voucher, invoice or other routine request for payment that is not in dispute when submitted is not a claim. A claim does not include a request for equitable adjustment or demand for payment, as defined below. "Demand for payment" means a written demand for payment, the granting of which results in a price adjustment under the contract. A demand for payment does not include a routine for payment in accordance with the payment terms of the contract.

"Events" means the Government action(s), Government inaction(s), Government conduct, or occurrence(s) which give rise to the contractor's claim, request for equitable adjustment, or demand for payment. The term events does not require the incurrence of costs and/or performance of additional work resulting from the action(s), inaction(s), conduct or occurrence(s) except where a contractor's commencement of the correction of defective GFI (including Government-furnished drawings and specifications)/GFP constitutes the final occurrence. For the purpose of this subpart, the date of the final Government action, Government inaction, Government conduct or occurrence is the date on which the 18 month period commences. The final Government action, Government inaction, Government conduct or occurrence and the date thereof for specific categories of liability are as follows:

(a) Formal changes (including changes based on engineering change proposals (ECPs) and non-engineering change proposals (NECPs)). The final Government action for a formal written change is the contracting officer's authorization or direction to proceed. The date the final Government action occurs is the date of receipt by the contractor of the contracting officer's authorization or direction to proceed. If the contracting officer unilaterally establishes the price of a previously issued maximum-pricing action is the final Government action. In this latter case, the date the final Government action occurs is the date of receipt by the contractor of the contracting officer's unilateral price determination.

(b) Defective Government-furnished property. The final Government action is the direction from the contracting officer regarding correction, replacement or repair of the property or notification that the property is not defective. The date the final Government action occurs is the date of receipt by the contractor of the contracting officer's direction or notification. If a contractor proceeds to correct a deficiency in Government furnished property without direction from the contracting officer regarding the correction, replacement or repair of the property, the final occurrence is the contractor's commencement of the correction, replacement or repair of the property. (Neither an attempt to perform in accordance with defective Government furnished property nor an attempt to determine whether there is a defect in the property and development of one or more potential solutions to correct such defect constitutes the commencement of correction. Commencement of correction is performance of work which is inconsistent with or not required by the contract other than the identification of the defect and possible solutions.) In this latter case, the date of the final occurrence is the date the contractor commences the correction, replacement or repair of the property.

(c) Defective Government-furnished specifications.

The final Government action is the contracting officer's direction regarding corrective action or notification that the specifications are not defective. The date the final action occurs is the date of receipt by the contractor of the contracting officer's direction or notification. If a contractor proceeds to correct

a deficiency in a specification without direction from the contracting officer regarding the correction, the final occurrence is the contractor's commencement of the correction. (Neither an attempt to perform in accordance with a defective specification nor an attempt to determine whether there is a defect in the specification and development of one or more potential solutions to correct such defect constitutes the commencement of correction. Commencement of correction is performance of work which is inconsistent with or not required by the specification other than the identification of the defect and possible solutions.) In this latter case, the date of the final occurrence is the date the contractor commences the correction.

(d) Defective Government-furnished drawings. The final Government action is the contractor's receipt of a revised corrective drawing, if receipt constitutes authorization or direction to proceed, otherwise, it is the contracting officer's direction regarding corrective action or notification that the drawing is not defective. The date the final Government action occurs is the date of receipt by the contractor of the revised drawing, if receipt constitutes authorization or direction to proceed, otherwise it is the date of receipt by the contractor of the contracting officer's direction regarding corrective action or notification that the drawing is not defective. If a contractor proceeds to correct a deficiency in a drawing, or without direction regarding corrective action from the contracting officer, the final occurrence is the contractor's commencement of the correction. (Neither an attempt to perform in accordance with a defective drawing nor an attempt to determine whether there is a defect in the drawing and development of one or more potential solutions to correct such defect constitutes the commencement of correction. Commencement of correction is the performance of work which is inconsistent with the drawing or not required by the drawing other than the identification of the defect and possible solutions.) In this latter case, the date of the final occurrence is the date the contractor commences the correction.

(e) Late Government-furnished property and information (including Government furnished equipment, material, specifications, drawings and other information). The final Government action is the actual delivery of the Government furnished property or information to the contractor, unless the contractor has previously received a notification from the contracting officer establishing a revised delivery date for the property or information, in which case such notification is the final Government action. The date the final Government action occurs is the date the property or information is delivered to the contractor or the date of receipt by the contractor of the aforementioned contracting officer's notification of a revised delivery date for the property or information.

(f) Constructive changes (other than those specifically addressed in other sections of this subpart). The final Government action, Government inaction, Government conduct or occurrence is the constructive authorization or direction to perform other than in accordance with the requirements of the contract. The date of the final Government action, Government inaction, Government conduct or occurrence is the date the contractor receives such constructive authorization or direction from an authorized Government representative.

(g) Breach of contract, impossibility, impracticability, unconscionability, mistake, misrepresentation and superior knowledge. These theories do not always allow an objective definition of the final Government action, Government inaction, Government conduct or occurrence. For assertions of breach of contract, impossibility, impracticability or unconscionability, the date of the final occurrence is the date on which the contractor knew or should have known of the breach of contract, impossibility, impracticability or unconscionability. For assertions of mistake or misrepresentation, the date of the final occurrence is the date on which the contractor knew or should have known of the mistake or misrepresentation. For assertions of superior knowledge, the date of the final occurrence is the earlier of the date on which the contractor knew or should have known of the superior knowledge or the date on which the contractor knew or should have known of the information that was not disclosed.

"Knew or should have known" includes the totality of the combined actual and constructive knowledge of all agents or employees (including a subcontractor, its agents and employees, where and to the extent a subcontractor is involved).

"Price adjustment" means an increase in the fixed price, target price, ceiling price, or final price of a fixed price type contract, or an increase in the fee structure of a cost reimbursement type contract, or monetary damages or other payment resulting from a contractor claim, request for equitable adjustment, or demand for payment. An adjustment to the sharing ratio or to any other pricing formula, procedure or provision, which has the effect of increasing the fixed price, target price, ceiling price, final price, or fee of the contract, is a price adjustment. A schedule adjustment, whether requested as part of a submission seeking a price adjustment or as the sole relief, or an adjustment for any matter which, pursuant to the terms of the contract is separate from or not included in the fixed price, target price, ceiling price or final price of a fixed price contract or the fee structure of a cost reimbursement contract, is not a price adjustment. The bilateral definitization of a maximum-price modification within the maximum price is not a price adjustment. A routine invoice or other request for payment or reimbursement in accordance with the terms of the contract, even if in dispute, which, if paid, would not result in an increase in the price of the contract is not a price adjustment. For the purpose of this subpart, relief granted pursuant to a request for extraordinary contractual relief under Public Law 85-804 does not constitute a price adjustment.

"Request for equitable adjustment" means a written request for a price adjustment under the contract.

"Shipbuilding contract" means a contract which provides for the construction of a ship which is of a type that is designated as a ship. (If the Navy is entering into a contract on behalf of another department, agency or activity of the federal Government, and such department, agency or activity involved designates the item being constructed as a ship, the contract is a shipbuilding contract.) A contract which includes items in addition to the construction of a ship is a shipbuilding contract. A contract for the conversion, reactivation, overhaul, or repair of a ship is not a shipbuilding contract. A contract for the acquisition of any type of vessel which type is not designated as a ship is not a shipbuilding contract.

5243.105-92 Prohibited actions and procedures.

(a) This subpart does not preclude:

- (1) bilateral modifications which are fully priced or maximum-priced prior to the contractor being authorized or directed to proceed by the contracting officer;
- (2) any pricing action which is either fully priced or maximum-priced, based on events which occurred less than 18 months prior to the execution of the bilateral modification incorporating the pricing action; or
- (3) the bilateral definitization of a maximum price within the maximum price established through an action identified in (1) or (2) above.

(b) Contracting officers may not adjust any price under a shipbuilding contract entered into after December 7, 1983, for an amount set forth in a claim, request for equitable adjustment, or demand for payment arising out of events occurring more than 18 months before the submission of a claim, request, or demand accompanied by adequate supporting data and, if the matter is over \$50,000, the certification required by Section 6(c)(1) of the Contract Disputes Act.

(c) In reviewing a claim, request for equitable adjustment, or demand for payment to determine whether the claim, request or demand, or any part thereof, is subject to the prohibition set forth in paragraph (b) of this section, contracting officers shall consider the theory upon which the contractor relies, the terms of the contract, and all pertinent Government action(s), Government inaction(s), Government conduct and occurrence(s). Claims, requests or demands arising out of different events included in a single claim, request, or demand shall be reviewed based on the events appropriate to each individual claim, request or demand and a determination of

the application of the prohibition set forth in paragraph (b) of this section shall be made for each such claim, request or demand.

5243.105-93 Documentation and certification requirements.

(a) For the purpose of this subpart, a claim, request for equitable adjustment, or demand for payment is not submitted until the contractor has furnished to the contracting officer adequate supporting data and, if the matter is over \$50,000, the certification required by Section 6(c)(1) of the Contract Disputes Act. If either the supporting data or the certification, if required, is deficient, the claim, request, or demand shall not be considered to be submitted until any such deficiency is corrected.

(b) Adequate supporting data. (1) The contractor has the burden and obligation to provide adequate supporting data to the contracting officer. Supporting data for a claim, request for equitable adjustment, or demand for payment is necessary not only to satisfy the statutory requirement but also to apprise the contracting officer of the underlying facts and the theory upon which the contractor relies in support of its entitlement to a price adjustment. To be considered adequate, a claim, request or demand must be accompanied by supporting data which fulfills these purposes in accordance with the requirements of the Contract Disputes Act. A submission containing the following information will be deemed to have been submitted with adequate supporting data:

(i) A narrative statement of the nature of the event(s), the time when the event(s) occurred (including the factual basis supporting the contractor's designation of the time the event(s) occurred), and the casual relationship between the event(s) and the impact on the cost of performance of the contract, including a description of how the event(s) affected scheduled performance;

(ii) A description of the relevant effort the contractor was required to perform in the absence of the event(s);

(iii) A description of the relevant effort the contractor was actually required or will be required to perform;

(iv) A description of components, equipment, and other property involved;

(v) A cost breakdown of the additional effort by element in accordance with the contractor's normal procedures for pricing of changes;

(vi) A description of all property which will no longer be needed by the contractor;

(vii) A description of any delay caused by the event(s);

(viii) A description of any disruption caused by the event(s).

(2) If any submission does not contain the data listed above, the submission shall be reviewed to determine if the data submitted is adequate to meet the requirements of the Contract Disputes Act. The contractor shall be notified of the nature of any deficiency in the supporting data which results in a determination that the submission is not adequate.

(c) Certification. (1) A claim, request for equitable adjustment, or demand for payment in excess of \$50,000 must be certified in accordance with the requirements of Section 6(c)(1) of the Contract Disputes Act. (See FAR 33.207.) If any submission does not contain a proper certification, the contractor shall be informed of any deficiency in the certification.

(2) A claim, request for equitable adjustment, or demand for payment certified in accordance with DFARS 233.7000(a) shall be considered to meet the certification requirements set fourth in (1) above.

(d) Once a claim, request for equitable adjustment, or demand for payment has been properly certified and accompanied by adequate supporting data, the date of proper certification and submission of adequate supporting data shall be operative for purposes of this subpart, even if additional certification(s) or data submission(s) is required of, or provided by, the contractor supplementing the original submission or revising the amount requested or theory of recovery, unless the additional certification or data submission is required or provided because the contractor has

submitted a new or essentially new claim, request, or demand based on different events.

5243.105-94 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 5252.243-9000, Notification of Applicability of 10 U.S.C. 2405, in all solicitations for shipbuilding contracts.

(b) The contracting officer shall insert the clause at 5252.243-9001, Requirements for Adequate Supporting Data and Certification of Any Claim, Request for Equitable Adjustment, or Demand for Payment in all shipbuilding solicitations and shipbuilding contracts.

SUBPART 5243.2--CHANGE ORDERS

5243.201 General.

Except for VECs, the policies and procedures of DFARS 217.74 and 5217.74 are applicable to the issuance of undefinitized change orders.

5243.204 Administration.

HCAs shall consider the backlog and age of undefinitized change orders as a command key indicator, placing routine management emphasis on undefinitized change orders.

PART 5244
SUBCONTRACTING POLICIES AND PROCEDURES

SUBPART 5244.3--CONTRACTORS' PURCHASING SYSTEMS REVIEWS

5244.302 Requirements.

(b) NAVSEASYSCOM is responsible for establishing procedures and conducting contractor's purchasing system reviews at the SUPSHIPS.

PART 5245

GOVERNMENT PROPERTY

SUBPART 5245.1--GENERAL

5245.102 Policy.

5245.102-90 Diversion of material.

When material urgently needed for DoN equipment positioned for combat or direct combat support is not available from the supply system stock, repair programs, or on a timely basis from contracts, contracting officers may direct diversion of Government furnished material (GFM) or Contractor-furnished material held by contractors for the performance of ongoing contracts.

5245.102-91 Repair or modification of GFP.

(a) When Government property is received by a contractor in a condition not suited for the intended use, the Contracting Officer may, under the terms of the Government Property clause or other contract provisions, direct the contractor to effect the necessary repair or modifications. The following procedures should be considered to more effectively and economically order and price the repair or modification of Government-furnished property:

(1) Contractor requests for equitable adjustment may be accumulated over short periods of time (avoiding retroactive pricing) so that price negotiations for several repair or modification orders can be accomplished at one time.

(2) Repair or modification orders may be accumulated and incorporated into one contract modification.

(3) Where adequate historical cost data is available and the volume of repairs or modifications to Government-furnished property is significant, consideration should be given to pricing by formula, or to the establishment of standard prices or hours for specified repairs or modifications to Government-furnished property.

(4) In some contracts (such as construction of several ships of the same class), it may be possible to forecast the anticipated number and extend of repairs or modifications to Government-furnished property, and to negotiate an amount for such into the contract price.

(b) In major acquisition programs where a large number of contract modifications for repair or modification of Government-furnished property can reasonably be anticipated, it is desirable for the contracting officer to meet with the cognizant contract administration office prior to award of contracts to determine the most effective and economical means of ordering. Consideration should be given to the procedures suggested under (a) above or to other procedures as mutually agreed upon among the contracting officer, the ACO, and the contractor.

(c) NAVSEA shall ensure that the SUPSHIPS utilize procedures for pricing of repair or modification of Government-furnished property which are suitable to the contract/contractor situation and are generally consistent with practices used in similar situations by other SUPSHIPS.

5245.104 Review and correction of contractor's property control systems.

(a) The property administrator shall verify that the contractor has an adequate series of checks and balances in its property control system. Reviews of the contractor's acquisition, receiving and disposition procedures, and all procedures regarding Government-furnished material, shall be reviewed annually.

5245.104-90 Management Control and Accounting for Government Furnished material (GFM) in the Custody of Contractors.

(a) Purpose. The physical and financial accounting requirements placed on the contractor do not relieve the Government from accounting for and reporting the value of GFM. Until such time as the DoD accounting system for GFM is developed and operational, the DoN will account for GFM in the custody of contractors by using DD Forms 1662 as the source documents for input to the DoN accounting systems. The purpose of these procedures in (e) of this section is to:

(1) Establish Property administration procedures to enable Navy Property Administrators to independently certify the accuracy and reliability of the value of GFM reported by contractors on their annual reports of "DoD Property in the Custody of Contractors" (DD Form 1662);

(2) Strengthen the relationship between the survey of Government property and the certification of DD Forms 1662;

(3) Integrate and consolidate the various policies, instructions, and guidance to Property Administrators concerning their responsibility for oversight of GFM; and

(4) Provide a bridge between physical and financial accountability.

(b) Policy.

(1) The procedures in (e) below will be used to provide the basis for certification by Navy Property Administrators of the reasonableness and accuracy of contractor data reported on line 17 of DD Form 1662.

(2) Property administration includes the evaluation of the contractor's management and control of GFM. The evaluation will incorporate methods and procedures that provide independence from the exclusive use of contractor records.

(3) Verification will be conducted throughout the course of a year and provides the basis upon which the Property Administrator certifies the reasonableness and accuracy of the contractor data on DD Form 1662.

(4) Contractor property control and accounting systems shall reflect unit prices for each item of GFM from date of receipt until date of delivery and acceptance by the Government of the contracted end item, return of GFM to Government control, or other relief of accountability by the Government.

(c) Responsibilities.

(1) The Commanders, NAVSEASYS COM and NAVSUPSYSCOM, and the Chief of Naval Research will:

(i) Notify ASN (RD&A) by 5 December of each year that applicable DD Forms 1662 have been certified and forwarded to the Naval Industrial Resources Support Activity.

(ii) Include in the above notification a report, sorted by CAO, contractor, and contract number, containing the following information:

(A) DD Form 1662 received - yes or no.

(B) Certified - with qualification or without qualification.

(C) If certified with qualification - brief explanation with corrective action taken.

(iii) Provide unit price information for GFM to CAOs.

(2) Contracting Officers will include in the contract, special distribution of shipping document(s) (DD 250, etc), and the names and address of the CAO(s) for the contractor (s) to which the materials are to be shipped.

(3) Contract Administration Office (CAO) activities will:

(i) provide the Property Administrator copies of all contracts, modifications for contracts and shipping documents which include Government property.

(ii) notify the contractor in writing that under the provisions of FAR 45.503, the contractor will be required to have a Property Control system that will account for GFM from date of receipt of the material until acceptance of the contracted end item by the DoD.

(iii) notify the contractor in writing of these procedures and that supporting documentation should be available to the Property Administrator to enable verification of the DD Form 1662 data.

(iv) inform the contractor that failure to submit correct, verifiable DD Forms 1662 will be noted as a serious deficiency during the survey, will be a major consideration in the final system rating, and may result in withdrawal of system approval.

(v) ensure adequate resources are assigned to the Property Administrator to complete the survey.

(vi) not later than 15 November of each year, provide to the cognizant HCAs a report of the DD Forms 1662 that have been submitted to NAVIRSA.

(4) Property Administrators will:

(i) obtain reports or records of GFM issued to the contractor from the Federal Supply System, from other contractors, or from any other source.

(ii) perform the verification of contractor control and accounting for GFM in accordance with DoD 4161.2M, Manual for Performance of Contract Property Administration and the procedures in (e) below.

(iii) return incomplete or incorrect DD 1662 reports to the contractor for appropriate action.

(iv) forward certified DD 1662 reports not later than 15 November to NAVIRSA. Reports may be submitted individually or as a batch. NAVIRSA will provide the SYSCOMs with a summary command report.

(v) provide the SYSCOMs a summary report, by contractor, of the results of DD 1662 certifications completed in accordance with the procedures in (e) below.

(5) NAVSUPSYSCOM will require the Ships Parts Control Center and the Aviation Supply Office to provide Navy CAOs with quarterly status reports of GFM issued to contractors not later than 30 days after the end of each quarter. Instructions and format for the Government Furnished Material (GFM) Status Report are in enclosure (2) to SECNAVINST 4440.32A of 27 September 1991.

(d) Oversight reviews.

(1) The provisions of this NAPS will be subject for all future Contract Management and Procurement Management Reviews (CMRs) and (PMRs).

(2) CMRs and PMRs will focus on timeliness and adequacy of the verification procedures as well as CAO management attention and control in assuring their accomplishment.

(e) Procedures.

(1) Property Administrators will annually survey the contractor's GFM Property Control System. The SPCC and ASO prepared quarterly reports of issues will be aggregated with other shipping documents forwarded by other Government activities and GFM contractors. The accumulation of independently received documents represents the preferred lot from which the survey sample will be taken. The survey consists of the following verification:

(i) material is authorized and is ordered in the required quantities.

(ii) contractor receiving reports are accurately prepared and proper action is taken on shortages, damages, or other discrepancies.

(iii) received material placed in storage is properly accounted for; issues and movement of GFM are controlled, accountable, and auditable to a specific contract; contractor's inventory performance indicates physical counts of selected

items; and reports of GFM on line 17 of the "DoD Property in the Custody of Contractors" (DD Form 1662) are accurate and complete.

(iv) excess material is accurately declared; records of scrap and salvage are accurate, records of end items accurately reflected incorporation of GFM; and transfers between contracts are based on proper authorities from gaining and losing contracting officers.

(2) DD Form 1662s are statistically sampled and compared to contractor records. The lot will be the number of contracts containing GFM held by the contractor. The sample selection technique and size will be in accordance with the DoD Property Manual DOD 4161.2M. The statistical sampling of the contractor prepared DD Form 1662 and verification of those reports will be accomplished upon receipt of the reports and before certification by the Property Administrator.

(3) Property administrators shall verify that the contractors have accurately reported the value of GFM in their possession based on the approved contractor GFM control and record keeping systems and that the value of GFM reported on Line 17, column e, "Balance End of Period" reflects the acquisition cost of all GFM in the warehouse and in production on 30 September of the reporting year.

(4) The Property Administrator certifies on the DD Form 1662 that the data reported on line 17 (GFM) accurately reflects the value of GFM under the contractor's control in accordance with the FAR/DFARS. This allows the DD Form 1662 to be a valid source document for the Navy's accounting system. If the Government's System Survey, as augmented by these procedures disclosed significant deficiencies in the contractor's GFM control system or Property Administrator is aware of inaccuracies on line 17 resulting from other than GFM control system deficiencies, the Property Administrator will footnote his/her signature and append or include a brief statement as to why an unqualified certification cannot be rendered.

(5) NAVIRSA edits and enters DD Forms 1662 received from Navy Property Administrators into the Defense Contract Property Management System.

(6) The consolidated DD Form 1662 is received by NAVIRSA and forwarded to Navy Accounting and Finance Center for input into the Navy accounting system.

(7) The total value of GFM in the custody of Navy contractors is submitted to the Department of the Treasury on the Navy's Report on Financial Position (TFS 220).

(8) Unit pricing.

(i) When the shipping documents identify unit prices, the contractor should record those prices as follows:

(A) Actual dollar value included on the shipping document;

(B) Dollar value followed by an "E" if shipment indicates that the unit price has been estimated;

(C) For Schedule A, or Government Furnished Material List line items, the total dollar value of the line item upon receipt of the total item in a single shipment. If the line is shipped in multiple shipments, the contractor may total the price of each component received or record the total dollar value of the item when the major item is received;

(D) "PP" if shipping document indicates item was previously priced on an earlier partial shipment of the item.

(ii) When the shipping documents do not contain unit price information, it is the contractor's responsibility to take action to obtain the missing prices. Some contractors request assistance from the CAO. When this occurs, the following actions should be taken by the CAO in order of preference:

(A) For shipments from the DoD supply System:

(a) Use one of the several automated data files which contain price information. Some of these contain both part number and NSN cross referencing and prices.

- (b) Use records of prior shipments if received within the last 18 months.
- (c) Use the Quarterly GFM Status Report from ASO or SPCC.
- (d) Call the CAO of the contract shipper or the Material Office of the Government activity for items shipped under DD Form 1149 documentation.
- (e) Contact the manufacturer of the item.

(B) For shipments from other contractors:

- (a) Shipments under DD Form 250 are required to contain unit prices in accordance with DFARS Appendix I. Request compliance with this requirement.
- (b) Use records of prior shipments if received within the last 18 months.
- (c) Request the HCA to provide unit prices.
- (d) Call the CAO of the contractor from which the material was shipped.

SUBPART 5245.3--PROVIDING GOVERNMENT PROPERTY TO CONTRACTORS

5245.302-1 Policy.

(a)(4)(A) The requirement for a determination and findings (D&F) applies to new facilities or existing facilities, and to extending the authorized period of use. The D&F requirement does not apply to contracts awarded under the A-76 Commercial Activities Program (see DoD Instruction 4100.33). The D&F must be made by both a contracting official at least one level above the contracting officer and the program manager. These two officials are the agency head's designees for issuing the D&F.

(a) (4) (iv) The D&F will be included in the business clearance prior to contract award or in the contract file when government facilities are authorized during contract performance. The original of the D&F shall be included in the contract file and a copy shall be retained in a central office at the systems command level for oversight review.

5245.302-70 Securing approval for facilities projects.

(a) (1) (S-90) APIA-PP and the Commandant of the Marine Corps may approve facility projects not exceeding \$3 million at any one location during one fiscal year. The Chief of Naval Research, the Commanders, Naval Systems Commands, and Director, Strategic Systems Program may approve facility projects (including research and development) that do not exceed \$2 million at any one location during one fiscal year.

5245.303 Providing material.

5245.303-1 Policy.

(S-90) DoN implementation. Any decision to provide GFM should be based on sound rationale and be fully documented in the contract file. Any decision to provide readily available commercial items as GFM requires detailed analysis and written justification supporting the decision and approved by the commander of the requiring activity, or a designated representative as being in the best interest of the Government.

(S-91) Providing material to shipwork or ship equipment contractors. (1) The interest of the Government may require furnishing material to shipwork or ship equipment contractors, the relatively low value of which renders impracticable the administrative burden of modifying the contract to provide for the additional Government-furnished material (GFM). Accordingly, where supply support of operating forces will not be endangered, DoN supply activities will furnish such material, if available, from Government supply sources, to shipwork or ship equipment contractors, subject to the following conditions:

- (i) Title to all material furnished shall remain in the Government;
- (ii) The total dollar value of all the line items, including any government accessorial and administrative charges, on one "Prime Contractor Request for Government-Furnished Material", NAVSUP Form 1366, shall not exceed \$5,000; requirements shall not be split for the purpose of circumventing this dollar limitation;
- (iii) The material furnished shall be incorporated into the end product acquired under the contract, or consumed in the performance of the contract. Any material furnished and not so incorporated or consumed will be returned to the Government (at the contractor's expense) in the same condition as received, reasonable wear and tear excepted. An appropriate refund or adjustment will be made for any material so returned;
- (iv) The contractor warrants that the material cannot be obtained from commercial sources in time to meet the delivery requirement, of the contract, or the CAO deems furnishing the material from Government supply sources to be in the best interest of the Government; documentation and approval shall be in accordance with 5245.303-1 (S-90);
- (v) The contractor agrees that the responsibility for delay remains with the contractor when the Government cannot supply acceptable material, supply the material on time, and/or if the material is found to be unacceptable after receipt;
- (vi) The contractor agrees to pay to the Government either the standard price of the material as published in the Management List Navy (MLN), plus accessorial and administrative charges (shipment to be made on Commercial Collect Bill of Lading); or the price at which the material would be available to the contractor, f.o.b. destination, if obtained from commercial sources, whichever is the greater; and
- (vii) Material will be furnished to the contractor subject to the Uniform Materiel Movement and Issue Priority System (UMMIPS) controls for issue of material as though it were furnished under a Government requisition to a DoN supply activity. The UMMIPS priority designator will be assigned to each request.

(2) This supplement and NAVSUP Manual, Volume II, paragraph 25495.2, govern the contractors' requests for material.

(3) requests shall be submitted to the Naval supply activity via the CAO or management control activity.

(4) Material shall not be requisitioned for a contractor by the CAO if the contractor has been turned down on a request made in accordance with the above procedures for identical material. In such cases, the matter shall be referred to the project or acquisition manager for resolution.

5245.303-2 Procedures.

(S-90) Implementation of the DoD management control activity system requires requisitions to the DoD Supply System from GFM to conform with the Approved MILSTRIP Change Letter 1 A (AMCL 1 A). All GFM requisitions originated by a contractor, or to be shipped to a contractor's address code must be validated by a management control activity (MCA) before being forwarded to the source of supply. Contracts awarded on or after 1 October 1990 will:

- (1) identify the management control activity;
- (2) stipulate that all requisitions for GFM from the supply system which are requisitioned by a contractor, or are to be shipped to a contractor must be submitted to the MCA rather than to the source of supply; and
- (3) identify authorized GFM by quantity and National Stock Number (NSN) where the contractor has authority to requisition GFM through the MCA.

(S-91) All requisitions, regardless of contract date, will identify the contract number as required in existing MILSTRIP procedures.

(S-92) Additional guidance for management control activities is in SECNAVINST 4440.32A dated 27 Sep 1991.

5245.306 *Providing special tooling.*

5245.306-90 Acquiring special tooling.

(a) Determination of appropriate classification.

(1) When the contractor provides the initial or final listing of property fabricated or acquired as special tooling (ST), the contracting officer will, before agreeing to the classification and approving for payment, the property as ST, obtain a written determination from a technical evaluator that the property is properly classified. The technical evaluator must be a person technically qualified to understand the criteria for classification of the property and its composition and use. This determination will be coordinated with the property administrator.

(2) During the technical review of cost proposals, the technical evaluator will also determine whether any general purpose plant equipment is being proposed for acquisition as ST. If general purpose plant equipment is improperly fabricated or acquired as ST, such equipment should be reclassified as facilities, direct cost should be disallowed, and any inappropriate profit should be recouped. The written determination by the Government technical evaluator will be included in the contract file.

5245.307 *Providing special test equipment.*

5245.307-2 Acquiring special test equipment.

(b) Notice and approval. When the contracting officer receives notice of the contractor's intent to acquire or fabricate special test equipment (STE), the contracting officer will, before approving contractor acquisition or fabrication of the equipment as STE, obtain a written determination that the property is properly classified in accordance with paragraph 5254.306-90(a) (1) above.

(S-90) When reviews of cost proposals determine improper classification of STE, action shall be taken in accordance with paragraph 5245.306-90(a) (2) above.

5245.310 *Providing agency-peculiar property.*

(c) See NAVCOMPT Manual (Volume 3) and NAVSUP Manual (Volume 2) for procedures for providing accounting data in contracts involving DoN stores account material in contractors' plant.

5245.390 *Providing Government Property by transfer.*

(a) Transfer of Government Property between Contracts.

(1) Policy. Government property shall not be transferred between contracts unless approval for retention is obtained, adequate consideration is received and proper identification is maintained.

(2) Contracts may not authorize the transfer of property from one contract to another without specific identification of the type, quantity and acquisition cost of the property which is authorized for transfer to the current contract.

(3) Copies of the contract modification will be distributed in accordance with FAR Subpart 4.2.

(4) Appropriate contract type. In conjunction with the review of government property to be transferred between contracts, the property administrator and the ACO should assure all such property has been provided by the government or acquired by the contractor under an appropriate contract type, i.e., facilities normally should be provided or acquired under a facilities contract (see FAR 45.302-2 and 45.302-3).

If it is determined that facilities were provided to or acquired by the contractor improperly under other than a facilities contract, the ACO shall notify the cognizant contracting officer and request a facilities contract, or a contract modification incorporating the property into an existing facilities contract. When warranted, the ACO shall initiate action to recoup any inappropriate fees or profits which were paid as a result of the improper acquisition or provision of facilities under a service or supply contract.

SUBPART 5245.4--CONTRACTOR USE AND RENTAL OF GOVERNMENT PROPERTY

5245.403 (DFARS 245.403) Rental--Use and Charge clause.

(a) The CCO is the agency head's designee for making the required determination.

5245.405 (DFARS 245.405) Contracts with foreign governments or international organizations.

(d) Submit requests to the Director, Defense Security Assistance Agency (DSAA) via APIA-PP.

SUBPART 5245.5--MANAGEMENT OF GOVERNMENT PROPERTY IN THE POSSESSION OF CONTRACTORS

5245.505 Records and reports of Government property.

5245.505-14 Reports of Government property.

(S-90) Property Administrators will forward all DD Forms 1662 reporting Government property to the Naval Industrial Resources Support Activity (NAVIRSA), Bldg. 75-2, Rm. 209, Naval Base, Philadelphia, PA 19112-5078, not later than 15 November each year for input into the DoD Contract Property Management System.

(S-91) The DD Forms 1662, Line 17, column e, "Balance End of Period" should reflect the acquisition cost of all GFM in the warehouse and in production on 30 September of the reporting year.

5245.508 Physical inventories.

5245.508-1 Inventories upon termination or completion.

(S-90) (1) Physical Inventories.

(i) Under DoN contracts, the property administrator may not waive the requirement for a physical inventory upon contract completion except to the extent provided in subparagraph (ii) below.

(ii) When it is anticipated that government property will be required for use on follow-on or other related contracts under major ongoing DoN programs, the property administrator may authorize the contractor to use a recent physical inventory, i.e., one conducted within the previous 12 months, or a sampling-type inventory to meet the physical inventory requirement provided that:

(A) The contractor has conducted previous physical inventories in accordance with the type and frequency approved by the property administrator; and

(B) The contractor's inventory plan provides for use of valid sampling techniques; and

(C) Experience has established the adequacy of the contractor's property inventory and accounting controls; and

(D) The degree of discrepancies disclosed during previous physical inventories does not exceed the risk the government is willing to accept, i.e., 10 percent (or a 90 percent confidence level).

(2) Inventory List.

(i) The automatic transfer by the contractor of record balances of government property to follow-on or other related contracts in lieu of preparing an inventory list upon contract completion is prohibited.

(ii) At least 60 days prior to contract completion (i.e., the date when all items are scheduled for delivery to the government), the contractor shall submit the following to the property administrator:

(A) A listing of all government property required to support contractual follow-on requirements or other known requirements, including spares and mobilization readiness requirements. This listing shall identify the category, quantity, and acquisition cost of such property, i.e., IPE, OPE, ST, STE, military property, and material.

(B) Justification for retention of any Government property not currently in use (see FAR 45.102).

(iii) Upon receipt of the required contract submission, the property administrator shall:

(A) Review and verify the contractor's stated government property requirements with the assistance, as required, from other technical specialists.

(B) Forward a copy of the contractor's follow-on or other related contract requirements list and retention justification statement, together with appropriate findings and recommendation, to the cognizant contracting officer.

(3) Final decisions. Final decisions with respect to transfer of government property to follow-on or other contracts shall be made by the cognizant contracting officer within 90 days after the receipt of the contractor's list and justification statement. If transfer approval or other disposition instructions are not received by the property administrator at the end of 90 days, the property administrator will issue follow-up correspondence which states, "Your failure to respond within 30 days of the date of this follow-on inquiry will be interpreted to mean the government property in question should be disposed of in accordance with FAR/DFARS/NAPS 45.603/245.603."

SUBPART 5245.6--REPORTING, REDISTRIBUTION, AND DISPOSAL OF CONTRACTOR INVENTORY

5245.603 Disposal methods.

The priorities identified at FAR 45.603 are applicable only to contractor-acquired material. These priorities have no applicability to special tooling, special test equipment, facilities, or military property.

5245.606 *Inventory schedules.*

5245.606-3 Acceptance.

(a) DD Form 1640, Request for Plant Clearance, shall be used to initiate referral actions, applicable to subcontractors outside the assigned area of the CAO cognizant of the prime contractor. The following information shall be included in the remarks section of the form:

(1) When a Military Department, other than the acquiring Department which funded the contract, generated the inventory, provide the following type information:

(i) Available information on non-standard clauses or other unusual contract features concerning contractor/or subcontractor disposal obligation; and

(ii) Desired disposition to be made of proceeds of sale if nontermination inventory is involved.

(b) The plant clearance officer initiating the referral action shall insure that inventory schedules are complete and accurate. All available information pertinent to the inventory shall be forwarded to the plant clearance officer receiving the referral action.

5245.608 *Screening of contractor inventory.*

5245.608-1 General.

(S-90) To accomplish the screening requirements within the prescribed time periods, the following procedures shall be employed:

(1) Upon receipt of inventory schedules in acceptable form, the plant clearance office shall effect the following distribution:

(i) Original to the requiring activity.

(ii) To each DoN inventory manager who may have an interest in the property either in whole or for any of its major subassemblies. (DoN inventory managers are listed in NAVSUP Manual, Volume 2, Chapter 1.)

(iii) To the contracting activity if different than (i) or (ii) above.

(iv) To technical Commands, Offices, Bureaus and Naval activities, other than inventory managers, considered to have potential requirements for the property.

(2) Retention and redistribution requirements of the owning Commands, Offices and Bureaus (requiring activities), inventory managers, contracting activities and other Naval activities shall be furnished directly to the reporting office during this period. In the event of dual DoN requirements for any inventory items, the order of preference shall be in the sequence indicated above. Shipments shall be held in abeyance during the 30-day DoN-wide screening period to the extent necessary to ensure compliance with the foregoing priority sequence.

(S-91) Army, DoN, Defense Logistics Agency, National Aeronautics and Space Administration inventory control points, contracting offices or regions are listed in the Defense Contract Management Command, Contract Property Disposition Manual (DCMC) 8130.1.

5245.608-5 Special items screening.

(a) Special test equipment with standard components. Notwithstanding the provision of FAR 45.608-5(a), the final approval for contractor retention of standard components of special test equipment (STE) or for the transfer of industrial plant equipment items, which are components of STE, shall be made by the contracting officer in lieu of the ACO.

(S-90) Special tooling. Special tooling, to which the Government has the right to acquire title (FAR 52.245-17), shall be screened with the contracting activity by letter, rather than Standard Form 120, Report of Excess Personal Property. Within 90 days after receipt of a listing of special tooling acquired or manufactured by the contractor, unless a later date is agreed to by the parties, the PCO shall provide a decision to the contractor commensurate with the choices enumerated in paragraph (i), Disposition instructions, of the clause at FAR 52.245-17, Special Tooling.

5245.608-7 Reimbursement of costs for transfer of contractor inventory.

(S-90) Where a contract does not require the contractor to provide packing, crating and handling (PC&H) services for excess Government property, or where such PC&H services will result in any cost for which the contractor will not otherwise be compensated, the CAO shall obtain PC&H services from the contractor in possession by contract modification if the contract provides for such a modification. Otherwise, such PC&H services shall be acquired from the contractor in possession or other contractor as follows:

(1) If the estimated price is \$25,000 or less, the ACO shall contract for services in accordance with FAR Part 13; or

(2) If the estimated price of such services is in excess of \$25,000, the ACO shall request the nearest DoN field contracting office to execute the contract. For Marine Corps contracts, the cognizant contracting officer shall be required to execute the contract.

5245.612 Removal and storage.

5245.612-3 Special storage at the Government's expense.

(a) Prior to authorizing retention of items in storage the contracting officer shall ensure that a retention plan has been developed. Retention plans will include the justification for storage, a detailed description of the property to be stored, storage costs, location, planned period of storage, and source of funds for storage.

(S-90) The use of "no-costs" or no direct cost storage agreements is prohibited.

SUBPART 5245.70 (DFARS 245.70) **APPOINTMENT OF PROPERTY ADMINISTRATORS AND PLANT** **CLEARANCE OFFICERS**

5245.7001 (DFARS 245.7001) Selection, appointment and termination.

5245.7001-4 (DFARS 245.7001-4) Duties and responsibilities of plant clearance officer. Each DoN CAO, as defined in the DoD Directory of Contract Administration Services Components (DoD 4105.59-H), shall appoint a plant clearance officer in writing. A copy of the written appointment shall be furnished to the Headquarters Command of the CAO.

SUBPART 5245.73 (DFARS 245.73) SALE OF
SURPLUS CONTRACTOR INVENTORY

5245.7302 (DFARS 245.7302) Competitive Sales.

5245.7302-5 (DFARS 245.7302-5) Mailing lists.

(S-90) Sales invitations shall be furnished to the supplier, the producer of each item being sold, and the:

- (1) Contractor or subcontractor;
- (2) Accountable contractor, if other than (2) above;
- (3) Reporting activity; and
- (4) Headquarters Command of the CAO.

PART 5246

QUALITY ASSURANCE

SUBPART 5246.7--WARRANTIES

5246.702 (DFARS 246.702) General.

(f) Program managers and project officers shall use the data collected under 5242.302-90(c)(5) to accumulate and track data pertaining to systems/equipments/supplies/services under their cognizance which are subject to warranty.

5246.703 Criteria for use of warranties.

(c) Administration and enforcement. The types and contents of reports to be provided by the contractor regarding administration of DoN warranties, including Security Assistance Programs, shall be specified in the contract in sufficient detail to enable assessment of the effectiveness of the warranty for the specific item or system and the effectiveness of the DoN's overall warranty program. As a minimum, the data contained in 5242.302-90(c)(5) shall be specified in the contract.

5246.706 Warranty terms and conditions.

(b)(3) Duration of the warranty. Consideration must be given to the operational characteristics of the item or system and the time likely to elapse between Government acceptance and actual use. The duration must be sufficient to cover the defects and failure that are likely to occur in service use.

(b)(5) Markings. Warranted items shall be marked with the National Stock Number (NSN) or manufacturer's part number, a serial number or other item identifier (if the warranty applies to uniquely identified items), the contract number, an indication that a warranty applies, the manufacturer or entity (if other than the contractor) providing the warranty, the date or time the warranty expires, and an indication of whether or not attempted on-site repair by DoN personnel will void the warranty.

5246.710 Contract clauses.

Program managers, project officers and contracting officers are encouraged to contact the Product Performance Agreement Center, Wright-Patterson AFB, OH, for assistance in developing and analyzing potential warranty clauses and cost-benefit analysis models. Acceptable turnaround time(s) for warranty corrective actions taken by the contractor should be specified in the clause, and consideration should be given to using liquidated damages or charging the contractor for product replacement costs when specified turnaround times are not met.

5346.770 (DFARS 246.770) Warranties in weapon system acquisitions.

5246.770-2 Policy.

(S-90) Any items excluded from warranty coverage shall be specified.

5246.770-7 Cost-benefit analysis.

Cost benefit analyses shall be included in Section VIII of the business clearance memorandum in accordance with 5201.690-9.

5246.770-8 Waiver and notification procedures.

(c) Requests for waiver shall be submitted to APIA-PP.

5246.790 Delegation of warranty administration.

Contracting officers shall delegate to SUPSHIP activities the function of warranty administration in accordance with 5242.302-90(c) (5). Contracting officers shall include in letters of delegation to non-DoN contract administration activities warranty administration functions similar to those delegated to DoN activities.

SUBPART 5246.8--CONTRACTOR
LIABILITY FOR LOSS OF OR DAMAGE TO PROPERTY OF
THE GOVERNMENT

5246.805 Contract clauses.

(S-90) Within the limits set forth at 5231.205-26, NAVSEASYS COM has an approved deviation to use a modified version of FAR 52.246-24, Limitation of Liabilities - High Value Items.

PART 5247

TRANSPORTATION

SUBPART 5247.1--GENERAL

5247.105 (DFARS 247.105) Transportation assistance.

(a) (ii) Transportation management specialists will address requests for freight rates, port handling charges and related costs to the sources indicated in subparagraphs (A), (B) and (C) below. The term "port handling charges" includes accessorial service charges such as wharfage, heavy lift, handling and uploading.

(A) For all modes of transportation within CONUS and for ships from CONUS to overseas address the cognizant Military Traffic Management Command (MTMC) Area Commander in Chapter 2 of the Defense Traffic Management Regulation (NAVSUPINST 4600.70, MCO P4600.14B).

(B) For air transportation from CONUS to overseas address the Military Airlift Command (CODE TRKS)

(C) For all modes of transportation originating overseas address the overseas Theater Commander exercising assigned common user military operated land transportation responsibility. This service is provided by the Army except as may be otherwise directed by the Theater Commander (Joint Service Instruction OPNAVINST 4640.3).

(S-90) Consignment data in contracts shall be in accordance with the consignment instructions in the Terminal Facilities Guide, United States Navy, Marine Corps, and Coast Guard (NAVSUP Pub. 445, MCO P4600.9A).

5247.190 Transportation for classified contracts.

(a) Contracts classified as confidential or higher shall be purchased on an f.o.b. origin basis when the size, bulk or quantity to be transported will require the employment of commercial transportation services. Under such circumstances these contracts shall provide for transportation at Government expense (normally on U.S. Government bills of lading). Routing instructions, when required, will be obtained from the appropriate military sources (see Far 47.105(b)). These are the only sources permitted to authorize commercial transportation within the DoN. Exception is made with respect to shipments via those media which shipping officers (as defined in NAVSUP Manual Par. 51056) have been delegated authority to route. Representatives may obtain assistance and advice relative to the particular mode of transportation to be employed from the appropriate military traffic management sources. See also DoD Information Security Program Regulation (DoD 5200.1-R) and Department of the Navy Supplement (OPNAVINST 5510.1H dated 29 April 1988).

5247.191 Transportation mode.

(a) The Contract as awarded. Contracts and purchase orders normally shall not specify a particular method of transportation or a particular carrier for the delivery of contract items. If the contracting officer considers it necessary for the DoN to control the method of transportation (e.g., so as to expedite the movement of contract items or otherwise to fulfill special DoN requirements), the contract shall generally be made on the basis of delivery f.o.b. origin, and this is a valid reason for departing from the policy of FAR 47.101(b) (1). However, when special types of transportation equipment or limited facilities for the delivery and receipt

of material at destination permit the use of only one mode of transportation, such special delivery requirements may be included in f.o.b. destination purchase documents without prior referral to appropriate MTMC Area Command.

(b) Contract modification of f.o.b. destination to f.o.b. origin. Where it becomes necessary to control the method of transportation under an f.o.b. destination contract, and numerous changes are likely to be made, time permitting, the contracting officer shall issue a contract modification changing the place of delivery to f.o.b. origin and shall make an appropriate downward adjustment in the contract price.

(c) Modification of f.o.b. destination contracts to specify transportation method. Ordinarily changes in destination or advancement of delivery date under f.o.b. destination contracts shall be made by contract modifications which set forth the new destination or delivery date and adjust the contract price as necessary. If it is also necessary to specify a particular method of transportation, it is imperative that contracting officers consult the appropriate MTMC office and NAVSUP Manual, Vol. V. The method of delivery should be stated in the modification.

(d) Dispatch and oral instructions to contractors. If a shipment is extremely urgent and time does not permit prior modification of the contract to include the new destination or delivery date and method of delivery, the contracting officer (or the cognizant field) contract administrator, as directed or authorized by the contracting officer) may issue dispatch shipping instructions to the contractor to effect timely delivery of contract items. If time does not permit dispatch instructions, oral instructions may be given, but they shall be immediately confirmed in writing. As soon as possible, dispatch and oral instructions shall be incorporated in a contract modification prepared in accordance with paragraph (c) above. Obtain advice of military traffic management officers before issuing dispatch or oral shipping instructions to ensure the most expeditious and economical method of transportation. Contracting officers should not specify methods of shipments without such prior consultants with MTMC office. The basic policy and the authority in the election of the method of transportation are stated in NAVSUP Manual, Vol. V.

(e) Late deliveries. All actions taken under this section shall be consistent with FAR Subpart 49.4, Termination for Default and FAR Subpart 42.11, Production Surveillance and Reporting. Where it is evident that the contractor will be delinquent in making delivery, the Government does not pay for premium transportation used to meet delivery dates.

PART 5248
VALUE ENGINEERING

SUBPART 5248.1--POLICIES AND PROCEDURES

5248.102 Policies.

(g) Contracting officer are authorized to modify the "Value Engineering" clause in accordance with the prescriptive language at FAR 52.248-1.

PART 5249
TERMINATION OF CONTRACTS

SUBPART 5249.5--CONTRACT
TERMINATION CLAUSES

5249.501 General.

Forward requests for authority to use special purpose termination clauses to APIA-PP. Requests shall include:

- (a) justification of the need for a special purpose clauses; and
- (b) a copy of the proposed clause and written approval by the Office of the General Counsel as to its form and legality.

**5249.504 Termination of fixed-price contracts for default. (DAR COUNCIL
DEVIATION #90-949-02 - 4 DECEMBER 1991)**

(a) (1) MSC, in its solicitations and contracts affecting the operation and mission of MSC-controlled vessels, is authorized to deviate from FAR 49.504 (a) (1) to use a modified version of FAR 52.249-8 and its Alternate I.

PART 5250

EXTRAORDINARY CONTRACTUAL ACTIONS

SUBPART 5250.1--GENERAL

5250.104 (DFARS 250.104) Reports.

HCA's shall submit an annual report covering extraordinary contractual actions by 15 January in accordance with DoD Instruction 4105.69. The annual report shall be submitted to APIA-PP.

5250.105 (DFARS 250.105) Records.

(1) (iii) General. HCAs are the officials responsible for preparation and submission of the required records. The records shall be forwarded to APIA-PP who will be responsible for maintaining the records.

SUBPART 5250.2--DELEGATION OF AND LIMITATIONS ON EXERCISE OF AUTHORITY

5250.201 (DFARS 250.201) Delegation of authority.

5250.201-70 Delegations.

(a) Authority to approve actions under FAR subparts 50.3 and 50.4, which obligate \$50,000 or less, and to deny any request, is delegated to the HCA subject to the limitations in FAR 50.201 and 50.203. This authority may be further delegated to the Deputy/Assistant Commander for Contracts subject to the same limitations, except approval of actions under FAR 50.4, obligating \$50,000 or less may not be delegated. Each exercise of this delegated authority shall have the prior approval of counsel.

5250.202 Contract adjustment boards.

The Chairperson, other members and alternate members shall be appointed by the ASN(RD&A). Each case shall be considered by a Chair and not less than two or more than six other members or alternate members, at least one of whom shall be an attorney employed in the Office of the General Counsel.

SUBPART 5250.3--CONTRACT ADJUSTMENTS

5250.305 Processing cases.

(b) The contracting activity responsible for processing a contractor's request for contractual adjustment under a DoN contract shall be responsible for establishing liaison and joint action with other Military Departments and other departments and agencies of the Government, except that the Navy Contract Adjustment Board shall have such responsibility after any such case is submitted to it. The cognizant contracting activity shall be responsible for all other interdepartmental coordination except that a finding that a contractor is essential to the national defense for performance of DoN contracts or as a source of supply to the DoN may be made only by the Navy Contract Adjustment Board. Where a contracting activity desires to recommend such a finding, its recommendation shall be submitted to the

Board but containing only such of the listed data as may be sufficient for this purpose.

5250.305-71 (DFARS 250.305-71) Processing cases to contract adjustment boards.

(a) and (b) Five (5) copies of all required information shall be furnished to the Navy Contract Adjustment Board.

5250.306 (DFARS 250.306) Disposition.

5250.306-70 (DFARS 250.306-70) Record of disposition. Where a contractor's request is denied, the contractor shall be furnished a letter explained the denial.

SUBPART 5250.4--RESIDUAL POWERS

5250.403 Special procedures for unusually hazardous or nuclear risks.

5250.403-2 Action on indemnification requests.

(a) Requests for authorization to use the clause prescribed at FAR 50.403-3 shall be made to APIA-PP, with sufficient narrative justification for submission to the Secretary of the Navy.

PART 5252

SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 5252.1--INSTRUCTIONS FOR USING PROVISIONS AND CLAUSES

5252.101 Using part 52.

(b) Numbering. (2) (ii) Clause numbers for provisions and clauses in this supplement, as well as component clauses, consist of 11 digits assigned as follows:

POSITION	NUMBER	EXPLANATION
1-2	52	Indicates Chapter 52 in Title 48 of the CFR.
3-5	52.2	Indicates correspondence with FAR Subpart 52.2, "Texts of Provision and Clauses".
6-7	XX-	Indicates part number in FAR or DFARS which clause implements or supplements.
8-11	9XXX	Sequences clauses within part number and indicates originating activity.
		9000-9099 NAPS (OASN(RD&A))
		9100-9199 SEA
		9200-9299 SPA
		9300-9399 FAC
		9400-9499 SUP
		9500-9599 AIR
		9600-9649 ITAC
		9650-9699 MC
		9700-9749 ONR
		9750-9799 SSP
		9800-9999 MSC

SUBPART 5252.2-- TEXTS OF PROVISIONS AND CLAUSES

5252.200 Scope of subpart.

This subpart set forth the texts of all NAPS provision and clauses and for each, given a cross-reference to the location the NAPS that prescribes its use.

5252.201-9000 CIVIL WORKS--DELEGATION TO NAVAL FACILITIES ENGINEERING COMMAND

As prescribed in 5201.690-1(b) (6), insert the following clause:

CIVIL WORKS--DELEGATION TO NAVAL FACILITIES ENGINEERING
COMMAND (APR 84)

(a) The Commander, Naval Facilities Engineering Command, having cognizance of the construction of all items at privately operated establishments which would constitute Public Utilities if constructed at a Shore Establishment of the Navy (such items

being hereinafter referred to as Civil Works), is hereby designated as the authorized representative of ____*____ with respect to any such Civil Works called for by this contract, said delegation including but not being limited to the performance of the following functions:

- (1) Approving selection and compensation of an architect or engineer;
- (2) Approving the selection and fee of a general building contractor;
- (3) Consent to the placement of any subcontract for Civil works;
- (4) Approving any plans or specifications;
- (5) Approving of major alternations or increased cost within the estimated cost set forth in this contract for Civil Works;
- (6) Inspection, supervision, administration of the terms of the subcontract and acceptance of performance;
- (7) Monitoring compliance with labor standards requirements; and
- (8) Ordering or approving changes relating to the Civil Works.

(b) The ____**____, acting for the Commander, Naval Facilities Engineering Command, will have jurisdiction only over the Civil Works design, construction and installation, unless otherwise specifically provided in this contract or unless otherwise determined by mutual agreement between the contracting office and the Naval Facilities Engineering Command.

* identify activity

** insert name and address of cognizant NAVFACENGCOM Division

(End of Clause)

5252.215-9000 SUBMISSION OF COST OR PRICING DATA

As prescribed at 5215.407(S-90), insert the following provision

SUBMISSION OF COST OR PRICING DATA (Nov 1987)

(a) It is expected that this contract will be awarded based upon a determination that there is adequate price competition; therefore, the offeror is not required to submit or certify cost or pricing data (SF 1411) with its proposal.

(b) If, after receipt of the proposals, the contracting officer determines that adequate price competition does not exist in accordance with FAR 15.804-3, the offeror shall provide certified cost or pricing data as requested by the contracting officer.

(End of Clause)

Alternate I (Nov 1987). As prescribed at 5215.407(S-90), substitute the following paragraph (b):

(b) If, after receipt of the proposals, the contracting officer determines that adequate price competition does not exist, the offeror shall provide certified cost or pricing data as requested by the contracting officer. The offeror shall provide the requested data within ____*____ calendar days from the date of the contracting officer's request.

* Insert number of days.

(End of Clause)

5252.243-9000 Notification of Applicability of 10 U.S.C. 2405.

As prescribed at 5243.105-94(a), insert the following provision:

NOTIFICATION OF APPLICABILITY OF 10 U.S.C. 240 (NOV 1991)

The contract which will result from an award made pursuant to this solicitation is a shipbuilding contract, and, therefore, any claim, request for equitable adjustment, or demand for payment submitted by the contractor seeking a price adjustment under this contract is subject to 10 U.S.C. 2405.

(End of Clause)

5252.243-9001 Requirements for Adequate Supporting Data and Certification of Any Claim, Request for Equitable Adjustment, or Demand for Payment.

As prescribed at 5243.105-94(b), insert the following clause in full text:

REQUIREMENTS FOR ADEQUATE SUPPORTING DATA
AND CERTIFICATION OF ANY CLAIM, REQUEST FOR
EQUITABLE ADJUSTMENT, OR DEMAND FOR PAYMENT
(NOV 1991)

(a) This contract is subject to 10 U.S.C. 2405; therefore, no price adjustment will be made under this contract for an amount set forth in a claim, request for equitable adjustment, or demand for payment (or incurred due to the preparation, submission, or adjudication of any such claim, request, or demand) arising out of events occurring more than 18 months before the submission of the claim, request, or demand.

(b) A claim, request for equitable adjustment, or demand for payment is considered to be submitted on the date the contractor's submission is received by the contracting officer accompanied by adequate supporting data for the claim, request or demand, and the certification required by Section 6(c)(1) of the Contract Disputes Act, if the claim, request or demand is over \$50,000.

(c) Adequate supporting data includes data which is adequate to apprise the contracting officer of the underlying facts and the theory upon which the contractor relies in support of its entitlement to a price adjustment. Adequate supporting data is that data which fulfills these purpose in accordance with the requirements of the Contract Disputes Act. A submission containing the following information will be deemed to have been submitted with adequate supporting data:

(1) A narrative statement of the nature of the event(s), the time when the event(s) occurred (including the factual basis supporting the contractor's designation of the time the event(s) occurred), and the causal relationship between the event(s) and the impact on the cost of performance of the contract, including a description of how the event(s) affected scheduled performance;

(2) A description of the relevant effort the contractor was required to perform in the absence of the event(s);

(3) A description of the relevant effort the contractor was actually required or will be required to perform;

(4) A description of components, equipment, and other property involved;

(5) A cost breakdown of the additional effort by element in accordance with the contractor's normal procedures for pricing of changes;

(6) A description of all property which will no longer be needed by the contractor;

(7) A description of any delay caused by the event(s);

(8) A description of any disruption caused by the event(s).

(d) Certification of the claim, request for equitable adjustment, or demand for payment is required if the requested price adjustment is over \$50,000. The

certification requirements are those set forth in the CDA and implementing regulations.

(e) For the purpose of this clause, the following terms have the meanings set forth below.

(1) "Claim" means a written demand or written assertion by the contractor seeking, as a matter of right, a price adjustment under the contract. The theory upon which the contractor seeks the price adjustment does not determine whether a particular matter is a claim. The term includes a submission asserting any theory supporting a price adjustment, including but not limited to constructive change, breach of contract or mistake, which, if valid, would result in contractor entitlement to a price adjustment. A voucher, invoice or other routine request for payment that is not in dispute when submitted is not a claim. A claim does not include a request for equitable adjustment or demand for payment, as defined below.

(2) "Demand for payment" means a written demand for payment, the granting of which results in a price adjustment under the contract. A demand for payment does not include a routine request for payment in accordance with the payment terms of the contract.

(3) "Events" means the Government action(s), Government inaction(s), Government conduct, or occurrence(s) which give rise to the contractor's claim, request for equitable adjustment, or demand for payment. The term events does not require the incurrence of costs and/or performance of additional work resulting from the action(s), inaction(s), conduct or occurrence(s) except where a contractor's commencement of the correction of defective GFI/GFP constitutes the final occurrence. For the purpose of this subpart, the date of the final Government action, Government inaction, Government conduct or occurrence is the date on which the 18 month period commences.

(4) "Knew or should have known" includes the totality of the combined actual and constructive knowledge of all agents or employees (including a subcontractor, its agents and employees, where and to the extent a subcontractor is involved).

(5) "Price adjustment" means an increase in the fixed price, target price, ceiling price, or final price of a fixed price type contract, or an increase in the fee structure of a cost reimbursement type contract, or monetary damages or other payment resulting from a contractor claim, request for equitable adjustment, or demand for payment. An adjustment to the sharing ratio or to any other pricing formula, procedure or provision, which has the effect of increasing the fixed price, target price, ceiling price, final price, or fee of the contract, is a price adjustment. A schedule adjustment, whether requested as part of a submission seeking a price adjustment or as the sole relief, or an adjustment for any matter which, pursuant to the terms of the contract is separate from or not included in the fixed price, target price, ceiling price or final price of a fixed price contract or the fee structure of a cost reimbursement contract, is not a price adjustment. The bilateral definitization of a maximum-price modification within the maximum price is not a price adjustment. A routine invoice or other request for payment or reimbursement in accordance with the terms of the contract, even if in dispute, which, if paid, would not result in an increase in the price of the contract is not a price adjustment. For the purpose of this subpart, relief granted pursuant to a request for extraordinary contractual relief under Public Law 85-804 does not constitute a price adjustment.

(6) "Request for equitable adjustment" means a written request for a price adjustment under the contract.

(End of Clause)

**APPENDIX A (TO FAR)
ACQUISITION OF FEDERAL INFORMATION PROCESSING (FIP)
RESOURCES BY CONTRACTING**

SUBPART 201-39.15--CONTRACTING BY NEGOTIATION

201-39.1502 Solicitation.

SECNAVINST 5231.1 establishes DoN requirements for selecting the solicitation approach for Federal Information Processing (FIP) resources. Solicitations should not be worded so as to preclude contractor submission of alternative methods of acquisition since such an alternative method may be in the best interests of the DoN.

NOTICE:

Please complete this form to provide notification of errors in the Navy Acquisition Procedures Supplement (NAPS) such as misspelled words, omitted material, or error in format. Do not use this form to submit suggested changes to the NAPS. Recommended changes should be submitted in accordance with 5201.201-1(d) (i). This form should be mailed to:

Department of the Navy
Director, Procurement Policy
Office of the Assistant Secretary
(Research, Development and Acquisition)
Washington, DC 20350-1000

NAVY ACQUISITION PROCEDURES SUPPLEMENT (NAPS)

January 1992 Edition

Department of the Navy
Director, Procurement Policy
Office of the Assistant Secretary
(Research, Development and Acquisition)
Washington, DC 20350-1000

An error has been noted in the NAPS as follows:

NAPS Part, Subpart, or Section: _____

Page Number: _____

Nature of Error: _____

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